

By the Committees on Ways and Means; Health Care; and Senator
Forman

301-2235-98

1 A bill to be entitled
2 An act relating to health quality assurance;
3 amending s. 112.0455, F.S., relating to the
4 Drug-Free Workplace Act; requiring background
5 screening for an applicant for licensure of
6 certain laboratories; authorizing the use of
7 certain body hair for drug testing; creating s.
8 381.60225, F.S.; requiring background screening
9 for an applicant for certification to operate
10 an organ procurement organization, a tissue
11 bank, or an eye bank; amending s. 383.302,
12 F.S., relating to the regulation of birth
13 centers; revising definitions to reflect the
14 transfer of regulatory authority from the
15 Department of Health and Rehabilitative
16 Services to the Agency for Health Care
17 Administration; amending s. 383.305, F.S.;
18 requiring background screening for an applicant
19 for licensure of a birth center; amending ss.
20 383.308, 383.309, 383.31, 383.312, 383.313,
21 383.318, 383.32, 383.324, 383.325, 383.327,
22 383.33, 383.331, F.S., relating to the
23 regulation of birth centers; conforming
24 provisions to reflect the transfer of
25 regulatory authority to the Agency for Health
26 Care Administration; amending s. 390.015, F.S.;
27 requiring background screening for an applicant
28 for licensure of an abortion clinic; amending
29 s. 391.206, F.S.; requiring background
30 screening for an applicant for licensure to
31 operate a pediatric extended care center;

1 amending s. 393.063, F.S., relating to
2 developmental disabilities; providing a
3 definition; amending s. 393.067, F.S.;
4 requiring background screening for an applicant
5 for licensure to operate an intermediate care
6 facility for the developmentally disabled;
7 amending s. 394.4787, F.S., relating to the
8 regulation of mental health facilities;
9 conforming a cross-reference to changes made by
10 the act; amending s. 394.67, F.S., relating to
11 community alcohol, drug abuse, and mental
12 health services; revising definitions; amending
13 s. 394.875, F.S.; requiring background
14 screening for an applicant for licensure of a
15 crisis stabilization unit or residential
16 treatment facility; amending ss. 394.876,
17 394.877, 394.878, 394.879, 394.90, 394.902,
18 394.903, 394.904, 394.907, F.S., relating to
19 the regulation of mental health facilities;
20 conforming provisions to reflect the transfer
21 of regulatory authority to the Agency for
22 Health Care Administration; amending s.
23 395.002, F.S., relating to hospital licensing
24 and regulation; providing definitions; creating
25 s. 395.0055, F.S.; requiring background
26 screening for an applicant for licensure of a
27 facility operated under ch. 395, F.S.; amending
28 s. 395.0199, F.S.; requiring background
29 screening for an applicant for registration as
30 a utilization review agent; amending s.
31 400.051, F.S.; conforming a cross-reference;

1 amending s. 400.071, F.S.; requiring background
2 screening for an applicant for licensure of a
3 nursing home; amending s. 400.411, F.S.;
4 requiring background screening for an applicant
5 for licensure of an assisted living facility;
6 amending ss. 400.414, 400.417, 400.4174,
7 400.4176, F.S., relating to the regulation of
8 assisted living facilities; providing
9 additional grounds for denial, revocation, or
10 suspension of a license; requiring background
11 screening for employees hired on or after a
12 specified date; amending ss. 400.461, F.S.,
13 relating to the regulation of home health
14 agencies; conforming a cross-reference;
15 amending s. 400.471, F.S.; requiring background
16 screening for an applicant for licensure of a
17 home health agency; amending s. 400.506, F.S.;
18 requiring background screening for an applicant
19 for licensure of a nurse registry; amending s.
20 400.555, F.S.; requiring background screening
21 for an applicant for licensure of an adult day
22 care center; amending s. 400.556, F.S.,
23 relating to disciplinary actions against adult
24 day care center licensees; making noncompliance
25 with background screening requirements a basis
26 for disciplinary action; amending s. 400.557,
27 F.S., relating to renewal of an adult day care
28 center license; requiring an affidavit of
29 compliance with background screening
30 requirements when a license is renewed;
31 creating s. 400.5572, F.S.; requiring

1 background screening for employees of an adult
2 day care center hired on or after a specified
3 date; amending s. 400.606, F.S.; requiring
4 background screening for an applicant for
5 licensure of a hospice; creating s. 400.6065,
6 F.S.; providing requirements for background
7 screening of hospice employees; amending s.
8 400.607, F.S., relating to disciplinary actions
9 against a hospice license; making noncompliance
10 with background screening requirements a basis
11 for disciplinary action; amending s. 400.619,
12 F.S.; revising background screening
13 requirements for an applicant for licensure of
14 an adult family care home; providing screening
15 requirements for designated relief persons;
16 deleting agency authority to take disciplinary
17 action against an adult family-care-home
18 license; revising rulemaking authority;
19 creating s. 400.6194, F.S.; providing for
20 disciplinary action against an adult
21 family-care-home license; making noncompliance
22 with screening requirements a basis for
23 disciplinary action; amending s. 400.801, F.S.;
24 requiring background screening for an applicant
25 for licensure of a home for special services;
26 amending s. 400.805, F.S.; requiring background
27 screening for an applicant for licensure of a
28 transitional living facility; amending s.
29 430.04, F.S.; providing duties and
30 responsibilities of the Department of Elderly
31 Affairs; requiring the department to take

1 disciplinary action against an area agency on
2 aging for failure to implement and maintain a
3 department-approved grievance resolution
4 procedure; amending s. 455.654, F.S., relating
5 to referring health care providers; conforming
6 cross-references to changes made by the act;
7 amending s. 468.505, F.S., relating to
8 disciplinary action against certain medical
9 professionals and activities exempt from
10 regulation; updating provisions and conforming
11 cross-references; amending s. 483.101, F.S.;
12 requiring background screening for an applicant
13 for licensure of a clinical laboratory;
14 amending s. 483.106, F.S., relating to a
15 certificate of exemption; correcting
16 terminology; amending s. 483.30, F.S.;
17 requiring background screening for an applicant
18 for licensure of a multiphasic health testing
19 center; repealing s. 455.661, F.S., which
20 provides for licensure of designated health
21 care services; providing appropriations and
22 authorizing positions; providing for
23 applicability of background screening
24 requirements; providing for future repeal;
25 providing for a review of certain background
26 screening requirements; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:
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31

1 Section 1. Subsection (12) and paragraph (b) of
2 subsection (13) of section 112.0455, Florida Statutes, are
3 amended to read:

4 112.0455 Drug-Free Workplace Act.--

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

6 (a) A laboratory may analyze initial or confirmation
7 drug specimens only if:

8 1. The laboratory is licensed and approved by the
9 Agency for Health Care Administration using criteria
10 established by the United States Department of Health and
11 Human Services as general guidelines for modeling the state
12 drug testing program. Each applicant for licensure must comply
13 with the following requirements:

14 a. Upon receipt of a completed, signed, and dated
15 application, the agency shall require background screening, in
16 accordance with the level 2 standards for screening set forth
17 in chapter 435, of the managing employee, or other similarly
18 titled individual responsible for the daily operation of the
19 laboratory, and of the financial officer, or other similarly
20 titled individual who is responsible for the financial
21 operation of the laboratory, including billings for services.
22 The applicant must comply with the procedures for level 2
23 background screening as set forth in chapter 435, as well as
24 the requirements of s. 435.03(3).

25 b. The agency may require background screening of any
26 other individual who is an applicant if the agency has
27 probable cause to believe that he or she has been convicted of
28 an offense prohibited under the level 2 standards for
29 screening set forth in chapter 435.

30 c. Proof of compliance with the level 2 background
31 screening requirements of chapter 435 which has been submitted

1 within the previous 5 years in compliance with any other
2 health care licensure requirements of this state is acceptable
3 in fulfillment of screening requirements.

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 level
20 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 the requirements for disclosure of ownership and control

1 interests under the Medicaid or Medicare programs shall be
2 accepted in lieu of 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 does 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 sub-subparagraph.

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

28 h. The agency may deny or revoke licensure if the
29 applicant:

30 (I) Has falsely represented a material fact in the
31 application required by sub-subparagraph e. or

1 sub-subparagraph f., or has omitted any material fact from the
2 application required by sub-subparagraph e. or
3 sub-subparagraph f.; or

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

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

9 2. The laboratory has written procedures to ensure
10 chain of custody.

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

13 a. The use of internal quality controls including the
14 use of samples of known concentrations which are used to check
15 the performance and calibration of testing equipment, and
16 periodic use of blind samples for overall accuracy.

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

20 c. Security measures implemented by the testing
21 laboratory to preclude adulteration of specimens and drug test
22 results.

23 d. Other necessary and proper actions taken to ensure
24 reliable and accurate drug test results.

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

29 1. The name and address of the laboratory which
30 performed the test and the positive identification of the
31 person tested.

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

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

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

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

10
11 No report shall disclose the presence or absence of any drug
12 other than a specific drug and its metabolites listed pursuant
13 to this section.

14 (c) The laboratory shall submit to the Agency for
15 Health Care Administration a monthly report with statistical
16 information regarding the testing of employees and job
17 applicants. The reports shall include information on the
18 methods of analyses conducted, the drugs tested for, the
19 number of positive and negative results for both initial and
20 confirmation tests, and any other information deemed
21 appropriate by the Agency for Health Care Administration. No
22 monthly report shall identify specific employees or job
23 applicants.

24 (d) Laboratories shall provide technical assistance to
25 the employer, employee, or job applicant for the purpose of
26 interpreting any positive confirmed test results which could
27 have been caused by prescription or nonprescription medication
28 taken by the employee or job applicant.

29 (13) RULES.--

30 (b) The following standards and procedures are
31 established related to hair testing:

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

1 (B) Cocaethylene at 1 ng/10 mg of hair.
2 (III) Opiate/synthetic narcotics and metabolites: 5
3 ng/10 mg of hair; opiate and metabolites include the
4 following:
5 (A) Codeine;
6 (B) 6-Monoacetylmorphine (heroin metabolite); and
7 (C) Morphine.
8 (IV) Phencyclidine: 3 ng/10 mg of hair.
9 (V) Amphetamines: 5 ng/10 mg of hair. For the
10 purpose of this section, amphetamines include the following:
11 (A) Amphetamines; and
12 (B) Methamphetamines.
13 b. All hair specimens undergoing confirmation must be
14 decontaminated using a wash procedure which has been published
15 in the peer-reviewed literature which, as a minimum, has an
16 initial 15-minute organic solvent wash followed by multiple
17 (minimum of three) 30-minute aqueous washes.
18 c. After hair is washed, the drug entrapped in the
19 hair is released either by digestion (chemical or enzymatic)
20 or by multiple solvent extractions. The resulting digest or
21 pooled solvent extracts are then screened and confirmed by
22 approved methods.
23 d. All confirmation analysis methods must eliminate
24 the melanin fraction of the hair before analysis. If a
25 nondigestion method is used, the laboratory must present
26 published data in the peer-reviewed literature from a large
27 population study which indicates that the method of extraction
28 does not possess a statistically significant hair-color bias.
29 e. Additional hair samples may be collected to
30 reconfirm the initial report. The recollected sample shall be
31 retested as specified; however, the confirmation analysis must

1 be performed even if the screening test is negative. A second
2 positive report must be made if the drug concentration in the
3 digest by confirmation methods exceeds the limit of
4 quantitation of the testing laboratory's method. A second test
5 must be offered to anyone disputing a positive hair test
6 result.

7 3. Hair specimen collection procedures.--

8 a. Designation of collection site.--Each drug-testing
9 program shall have one or more designated collection sites
10 which have all necessary personnel, materials, equipment,
11 facilities, and supervision to provide for the collection,
12 security, temporary storage, and shipping or transportation of
13 hair specimens to a licensed drug-testing facility.

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

17 c. Chain of custody.--Chain-of-custody standardized
18 forms shall be properly executed by authorized collection site
19 personnel upon receipt of specimens. Handling and
20 transportation of hair specimens from one authorized
21 individual or place to another shall always be accomplished
22 through chain-of-custody procedures. Every effort shall be
23 made to minimize the number of persons handling specimens.

24 d. Access to authorized personnel only.--The hair
25 collection site need be off limits to unauthorized personnel
26 only during the actual collection of specimens.

27 e. Privacy.--Procedures for collecting hair should be
28 performed on one individual at a time to prevent substitutions
29 or interference with the collection of reliable samples.
30 Procedures must ensure that the hair collection does not
31 infringe on the individual's privacy.

1 f. Integrity and identity of specimen.--Precautions
2 must be taken to ensure that the root end of a hair specimen
3 is indicated for the laboratory which performs the testing.
4 The maximum length of hair that shall be tested is 3.9 cm
5 distal from the head, which on average represents a 3-month
6 time window. The following minimum precautions must be taken
7 when collecting a hair specimen to ensure that specimens are
8 obtained and correctly identified:

9 (I) When an individual arrives at the collection site,
10 the collection site personnel shall request the individual to
11 present photo identification. If the individual does not have
12 proper photo identification, the collection site personnel
13 shall contact the supervisor of the individual, the
14 coordinator of the drug testing program, or any other employer
15 official who can positively identify the individual. If the
16 individual's identity cannot be established, the collection
17 site personnel shall not proceed with the collection.

18 (II) If the individual fails to arrive at the assigned
19 time, the collection site personnel shall contact the
20 appropriate authority to obtain guidance on the action to be
21 taken.

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

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

29 (V) Both the individual being tested and the
30 collection site personnel shall keep the specimen in view at
31 all times prior to the specimen container being sealed with a

1 | tamper-resistant seal and labeled with the individual's
2 | specimen number and other required information.

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

7 | (VII) The individual shall initial the container for
8 | the purpose of certifying that it is the specimen collected
9 | from the individual.

10 | (VIII) The collection site personnel shall indicate on
11 | the chain-of-custody form all information identifying the
12 | specimen. The collection site personnel shall sign the
13 | chain-of-custody form next to the identifying information or
14 | the chain of custody on the specimen container.

15 | (IX) The individual must be asked to read and sign a
16 | statement certifying that the specimen identified as having
17 | been collected from the individual is in fact that specimen
18 | the individual provided.

19 | (X) The collection site personnel shall complete the
20 | chain-of-custody form.

21 | g. Collection control.--To the maximum extent
22 | possible, collection site personnel shall keep the
23 | individual's specimen container within sight both before and
24 | after collection. After the specimen is collected, it must be
25 | properly sealed and labeled. An approved chain-of-custody form
26 | must be used for maintaining control and accountability of
27 | each specimen from the point of collection to final
28 | disposition of the specimen. The date and purpose must be
29 | documented on an approved chain-of-custody form each time a
30 | specimen is handled or transferred and every individual in the
31 |

1 chain must be identified. Every effort must be made to
2 minimize the number of persons handling specimens.

3 h. Transportation to the testing facility.--Collection
4 site personnel shall arrange to transport the collected
5 specimens to the drug-testing facility. The specimens shall be
6 placed in containers which shall be securely sealed to
7 eliminate the possibility of undetected tampering. The
8 collection site personnel shall ensure that the
9 chain-of-custody documentation is sealed separately from the
10 specimen and placed inside the container sealed for transfer
11 to the drug-testing facility.

12 4. Quality assurance and quality control.--

13 a. Quality assurance.--Testing facilities shall have a
14 quality assurance program which encompasses all aspects of the
15 testing process, including, but not limited to, specimen
16 acquisition, chain of custody, security and reporting of
17 results, initial and confirmatory testing, and validation of
18 analytical procedures. Quality assurance procedures shall be
19 designed, implemented, and reviewed to monitor the conduct of
20 each step of the process of testing for drugs.

21 b. Quality control.--

22 (I) Each analytical run of specimens to be screened
23 shall include:

- 24 (A) Hair specimens certified to contain no drug;
25 (B) Hair specimens fortified with known standards; and
26 (C) Positive controls with the drug or metabolite at
27 or near the threshold (cutoff).

28 (II) In addition, with each batch of samples, a
29 sufficient number of standards shall be included to ensure and
30 document the linearity of the assay method over time in the
31 concentration area of the cutoff. After acceptable values are

1 obtained for the known standards, those values must be used to
2 calculate sample data. Implementation of procedures to ensure
3 that carryover does not contaminate the testing of an
4 individual's specimen must be documented. A minimum of 5
5 percent of all test samples must be quality control specimens.
6 The testing facility's quality control samples, prepared from
7 fortified hair samples of determined concentration, must be
8 included in the run and must appear as normal samples to
9 drug-screen testing facility analysis. One percent of each
10 run, with a minimum of at least one sample, must be the
11 testing facility's own quality control samples.

12 5.a. Proficiency testing.--

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

16 (II) The drug-testing facility shall maintain records
17 which document the handling, processing, and examination of
18 all proficiency-testing samples for a minimum of 2 years from
19 the date of testing.

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

24 (IV) The proficiency-testing samples must be included
25 with the routine sample run and tested with the same frequency
26 as unknown samples by the individuals responsible for testing
27 unknown specimens.

28 (V) The drug-testing facility may not engage in
29 discussions or communications concerning proficiency-testing
30 results with other drug-testing facilities, nor may they send
31

1 proficiency-testing samples or portions of the samples to
2 another drug-testing facility for analysis.

3 b. Satisfactory performance.--

4 (I) The drug-testing facility shall maintain an
5 overall testing-event score equivalent to passing proficiency
6 scores for other drug-testing matrices.

7 (II) Failure to participate in a proficiency-testing
8 event shall result in a score of 0 percent for that testing
9 event.

10 c. Unsuccessful performance.--Failure to achieve
11 satisfactory performance in two consecutive testing events, or
12 two out of three consecutive testing events, is determined to
13 be unsuccessful performance.

14
15 This section shall not be construed to eliminate the
16 bargainable rights as provided in the collective bargaining
17 process where applicable.

18 Section 2. Section 381.60225, Florida Statutes, is
19 created to read:

20 381.60225 Background screening.--

21 (1) Each applicant for certification must comply with
22 the following requirements:

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

1 billings for services. The applicant must comply with the
2 procedures for level 2 background screening as set forth in
3 chapter 435, as well as the requirements of s. 435.03(3).

4 (b) The Agency for Health Care Administration may
5 require background screening of any other individual who is an
6 applicant if the Agency for Health Care Administration has
7 probable cause to believe that he or she has been convicted of
8 a crime or has committed any other offense prohibited under
9 the level 2 standards for screening set forth 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 health care licensure requirements of this state is acceptable
14 in fulfillment of the requirements of paragraph (a).

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

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

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

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

31

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

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

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

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

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

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

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

28 Section 3. Section 383.302, Florida Statutes, is
29 amended to read:

30
31

1 383.302 Definitions of terms used in ss.
2 383.30-383.335.--As used in ss. 383.30-383.335, ~~unless the~~
3 ~~context otherwise requires,~~the term:
4 (1) "Agency" means the Agency for Health Care
5 Administration.
6 (2)~~(1)~~ "Birth center" means any facility, institution,
7 or place, which is not an ambulatory surgical center or a
8 hospital or in a hospital, in which births are planned to
9 occur away from the mother's usual residence following a
10 normal, uncomplicated, low-risk pregnancy.
11 (3)~~(2)~~ "Clinical staff" means individuals employed
12 full time or part time by a birth center who are licensed or
13 certified to provide care at childbirth.
14 (4)~~(3)~~ "Consultant" means a physician licensed
15 pursuant to chapter 458 or chapter 459 who agrees to provide
16 advice and services to a birth center and who either:
17 (a) Is certified or eligible for certification by the
18 American Board of Obstetrics and Gynecology, or
19 (b) Has hospital obstetrical privileges.
20 ~~(4) "Department" means the Department of Health.~~
21 (5) "Governing body" means any individual, group,
22 corporation, or institution which is responsible for the
23 overall operation and maintenance of a birth center.
24 (6) "Governmental unit" means the state or any county,
25 municipality, or other political subdivision or any
26 department, division, board, or other agency of any of the
27 foregoing.
28 (7) "Licensed facility" means a facility licensed in
29 accordance with s. 383.305.
30 (8) "Low-risk pregnancy" means a pregnancy which is
31 expected to result in an uncomplicated birth, as determined

1 through risk criteria developed by rule of the department, and
2 which is accompanied by adequate prenatal care.

3 (9) "Person" means any individual, firm, partnership,
4 corporation, company, association, institution, or joint stock
5 association and means any legal successor of any of the
6 foregoing.

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

13 Section 4. Section 383.305, Florida Statutes, is
14 amended to read:

15 383.305 Licensure; issuance, renewal, denial,
16 suspension, revocation; fees; background screening.--

17 (1)(a) Upon receipt of an application for a license
18 and the license fee, the agency department shall issue a
19 license if the applicant and facility have received all
20 approvals required by law and meet the requirements
21 established under ss. 383.30-383.335 and by rules promulgated
22 hereunder.

23 (b) A provisional license may be issued to any birth
24 center that is in substantial compliance with ss.
25 383.30-383.335 and with the rules of the agency department. A
26 provisional license may be granted for a period of no more
27 than 1 year from the effective date of rules adopted by the
28 agency department, shall expire automatically at the end of
29 its term, and may not be renewed.

30 (c) A license, unless sooner suspended or revoked,
31 automatically expires 1 year from its date of issuance and is

1 renewable upon application for renewal and payment of the fee
2 prescribed, provided the applicant and the birth center meet
3 the requirements established under ss. 383.30-383.335 and by
4 rules promulgated hereunder. A complete application for
5 renewal of a license shall be made 90 days prior to expiration
6 of the license on forms provided by the agency ~~department~~.

7 (2) An application for a license, or renewal thereof,
8 shall be made to the agency ~~department~~ upon forms provided by
9 it and shall contain such information as the agency ~~department~~
10 reasonably requires, which may include affirmative evidence of
11 ability to comply with applicable laws and rules.

12 (3)(a) Each application for a birth center license, or
13 renewal thereof, shall be accompanied by a license fee. Fees
14 shall be established by rule of the agency ~~department~~. Such
15 fees are payable to the agency ~~department~~ and shall be
16 deposited in a trust fund administered by the agency
17 ~~department~~, to be used for the sole purpose of carrying out
18 the provisions of ss. 383.30-383.335.

19 (b) The fees established pursuant to ss.
20 383.30-383.335 shall be based on actual costs incurred by the
21 agency ~~department~~ in the administration of its duties under
22 such sections.

23 (4) Each license is valid only for the person or
24 governmental unit to whom or which it is issued; is not
25 subject to sale, assignment, or other transfer, voluntary or
26 involuntary; and is not valid for any premises other than
27 those for which it was originally issued.

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

30 (6) Whenever the agency ~~department~~ finds that there
31 has been a substantial failure to comply with the requirements

1 established under ss. 383.30-383.335 or in rules adopted under
2 those sections promulgated hereunder, it is authorized to
3 deny, suspend, or revoke a license.

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

6 (a) Upon receipt of a completed, signed, and dated
7 application, the agency shall require background screening, in
8 accordance with the level 2 standards for screening set forth
9 in chapter 435, of the managing employee, or other similarly
10 titled individual who is responsible for the daily operation
11 of the center, and of the financial officer, or other
12 similarly titled individual who is responsible for the
13 financial operation of the center, including billings for
14 patient care and services. The applicant must comply with the
15 procedures for level 2 background screening as set forth in
16 chapter 435 as well as the requirements of s. 435.03(3).

17 (b) The agency may require background screening of any
18 other individual who is an applicant if the agency has
19 probable cause to believe that he or she has been convicted of
20 a crime or has committed any other offense prohibited under
21 the level 2 standards for screening set forth in chapter 435.

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

27 (d) A provisional license may be granted to an
28 applicant when each individual required by this section to
29 undergo background screening has met the standards for the
30 abuse registry background check and the Department of Law
31 Enforcement background check, but the agency has not yet

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

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

26 (f) Each applicant must submit to the agency a
27 description and explanation of any conviction of an offense
28 prohibited under the level 2 standards of chapter 435 by a
29 member of the board of directors of the applicant, its
30 officers, or any individual owning 5 percent or more of the
31 applicant. This requirement does not apply to a director of a

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

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

20 (h) The agency may deny or revoke licensure if the
21 applicant:

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

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

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

31

1 Section 5. Paragraph (a) of subsection (2) of section
2 383.308, Florida Statutes, is amended to read:

3 383.308 Birth center facility and equipment;
4 requirements.--

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

10 Section 6. Section 383.309, Florida Statutes, is
11 amended to read:

12 383.309 Minimum standards for birth centers; rules and
13 enforcement.--

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

19 (a) Sufficient numbers and qualified types of
20 personnel and occupational disciplines are available at all
21 times to provide necessary and adequate patient care and
22 safety.

23 (b) Infection control, housekeeping, sanitary
24 conditions, disaster plan, and medical record procedures that
25 will adequately protect patient care and provide safety are
26 established and implemented.

27 (c) Construction, maintenance, repair, and renovation
28 of licensed facilities are governed by rules of the agency
29 ~~department~~ which use ~~utilize~~ the most recently adopted,
30 nationally recognized codes wherever feasible. Facilities
31 licensed under s. 383.305 are exempt from local construction

1 standards to the extent that those standards are in conflict
2 with the standards adopted by rule of the agency department.

3 (d) Licensed facilities are established, organized,
4 and operated consistent with established programmatic
5 standards.

6 (2) Any licensed facility that ~~which~~ is in operation
7 at the time of adoption promulgation of any applicable rule
8 under ss. 383.30-383.335 shall be given a reasonable time
9 under the particular circumstances, not to exceed 1 year after
10 ~~from~~ the date of such adoption promulgation, within which to
11 comply with such rule.

12 Section 7. Paragraph (b) of subsection (1) and
13 paragraph (b) of subsection (2) of section 383.31, Florida
14 Statutes, are amended to read:

15 383.31 Selection of clients; informed consent.--

16 (1)

17 (b) The criteria for the selection of clients and the
18 establishment of risk status shall be defined by rule of the
19 agency department.

20 (2)

21 (b) The agency department shall develop a client
22 informed-consent form to be used by the center to inform the
23 client of the benefits and risks related to childbirth outside
24 a hospital.

25 Section 8. Subsection (1) of section 383.312, Florida
26 Statutes, is amended to read:

27 383.312 Prenatal care of birth center clients.--

28 (1) A birth center shall ensure that its clients have
29 adequate prenatal care, as defined by the agency department,
30 and shall ensure that serological tests are administered as
31 required by this chapter.

1 Section 9. Subsection (1) of section 383.313, Florida
2 Statutes, is amended to read:

3 383.313 Performance of laboratory and surgical
4 services; use of anesthetic and chemical agents.--

5 (1) LABORATORY SERVICES.--A birth center may collect
6 specimens for those tests that are requested under protocol.
7 A birth center may perform simple laboratory tests, as defined
8 by rule of the agency department, and is exempt from the
9 requirements of chapter 483, provided no more than five
10 physicians are employed by the birth center and testing is
11 conducted exclusively in connection with the diagnosis and
12 treatment of clients of the birth center.

13 Section 10. Subsection (1) of section 383.318, Florida
14 Statutes, is amended to read:

15 383.318 Postpartum care for birth center clients and
16 infants.--

17 (1) A mother and her infant shall be dismissed from
18 the birth center within 24 hours after the birth of the
19 infant, except in unusual circumstances as defined by rule of
20 the agency department. If a mother or infant is retained at
21 the birth center for more than 24 hours after the birth, a
22 report shall be filed with the agency department within 48
23 hours of the birth describing the circumstances and the
24 reasons for the decision.

25 Section 11. Subsection (3) of section 383.32, Florida
26 Statutes, is amended to read:

27 383.32 Clinical records.--

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

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

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

5 Section 12. Section 383.324, Florida Statutes, is
6 amended to read:

7 383.324 Inspections and investigations; inspection
8 fees.--

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

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

15 (3) The agency ~~department~~ shall coordinate all
16 periodic inspections for licensure made by the agency
17 ~~department~~ to ensure that the cost to the facility of such
18 inspections and the disruption of services by such inspections
19 is minimized.

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

22 383.325 Inspection reports.--

23 (3) A licensed facility shall, upon the request of any
24 person who has completed a written application with intent to
25 be admitted to such facility or any person who is a patient of
26 such facility, or any relative, spouse, or guardian of any
27 such person, furnish to the requester a copy of the last
28 inspection report issued by the agency ~~department~~ or an
29 accrediting organization, whichever is most recent, pertaining
30 to the licensed facility, as provided in subsection (1),
31

1 provided the person requesting such report agrees to pay a
2 reasonable charge to cover copying costs.

3 Section 14. Subsection (4) of section 383.327, Florida
4 Statutes, is amended to read:

5 383.327 Birth and death records; reports.--

6 (4) A report shall be submitted annually to the agency
7 ~~department~~. The contents of the report shall be prescribed by
8 rule of the agency ~~department~~.

9 Section 15. Section 383.33, Florida Statutes, is
10 amended to read:

11 383.33 Administrative penalties; emergency orders;
12 moratorium on admissions.--

13 (1)(a) The agency ~~department~~ may deny, revoke, or
14 suspend a license, or impose an administrative fine not to
15 exceed \$500 per violation per day, for the violation of any
16 provision of ss. 383.30-383.335 or any rule adopted under ss.
17 383.30-383.335 promulgated hereunder. Each day of violation
18 constitutes a separate violation and is subject to a separate
19 fine.

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

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

28 2. Actions taken by the licensee to correct the
29 violations or to remedy complaints.

30 3. Any previous violations by the licensee.

31

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

5 (2) The agency ~~department~~ may issue an emergency order
6 immediately suspending or revoking a license when it
7 determines that any condition in the licensed facility
8 presents a clear and present danger to the public health and
9 safety.

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

15 Section 16. Section 383.331, Florida Statutes, is
16 amended to read:

17 383.331 Injunctive relief.--Notwithstanding the
18 existence or pursuit of any other remedy, the agency
19 ~~department~~ may maintain an action in the name of the state for
20 injunction or other process to enforce the provisions of ss.
21 383.30-383.335 and the rules adopted ~~promulgated~~ under such
22 sections.

23 Section 17. Subsection (3) is added to section
24 390.015, Florida Statutes, to read:

25 390.015 Application for license.--

26 (3) 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 clinic, and financial officer, or other similarly
3 titled individual who is responsible for the financial
4 operation of the clinic, including billings for patient care
5 and services. The applicant must comply with the procedures
6 for level 2 background screening as set forth in chapter 435,
7 as well as the requirements of s. 435.03(3).

8 (b) The agency may require background screening of any
9 other individual who is an applicant if the agency has
10 probable cause to believe that he or she has been convicted of
11 a crime or has committed any other offense prohibited under
12 the level 2 standards 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 licensure requirements of this state is acceptable
17 in fulfillment of the requirements of paragraph (a).

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

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

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

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

1 include in the application a statement affirming that the
2 director's relationship to the corporation satisfies the
3 requirements of this paragraph.

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

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

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

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

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

22 Section 18. Subsection (5) is added to section
23 391.206, Florida Statutes, to read:

24 391.206 Initial application for license.--

25 (5) Each applicant for licensure must comply with the
26 following requirements:

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

1 the financial operation of the center, including billings for
2 patient care and services. The applicant must comply with the
3 procedures for level 2 background screening as set forth in
4 chapter 435, as well as the requirements of s. 435.03(3).

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

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

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

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

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

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

31

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

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

10 (h) The agency may deny or revoke licensure if the
11 applicant:

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

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

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

21 Section 19. Present subsections (2) through (53) of
22 section 393.063, Florida Statutes, are renumbered as
23 subsections (3) through (54), respectively, and a new
24 subsection (2) is added to that section, to read:

25 393.063 Definitions.--For the purposes of this
26 chapter:

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

29 Section 20. Present subsections (6) through (18) of
30 section 393.067, Florida Statutes, are renumbered as
31

1 subsections (7) through (19), respectively, and a new
2 subsection (6) is added to that section, to read:

3 393.067 Licensure of residential facilities and
4 comprehensive transitional education programs.--

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

8 (a) Upon receipt of a completed, signed, and dated
9 application, the agency shall require background screening, in
10 accordance with the level 2 standards for screening set forth
11 in chapter 435, of the managing employee, or other similarly
12 titled individual who is responsible for the daily operation
13 of the facility, and of the financial officer, or other
14 similarly titled individual who is responsible for the
15 financial operation of the center, including billings for
16 resident care and services. The applicant must comply with
17 the procedures for level 2 background screening as set forth
18 in chapter 435, as well as the requirements of s. 435.03(3).

19 (b) The agency may require background screening of any
20 other individual who is an applicant if the agency has
21 probable cause to believe that he or she has been convicted of
22 a crime or has committed any other offense prohibited under
23 the level 2 standards for screening set forth 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 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 the requirements for disclosure of ownership and control
26 interests under the Medicaid or Medicare programs shall 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).

31

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

3 Section 21. Subsection (7) of section 394.4787,
4 Florida Statutes, is amended to read:

5 394.4787 Definitions.--As used in this section and ss.
6 394.4786, 394.4788, and 394.4789:

7 (7) "Specialty psychiatric hospital" means a hospital
8 licensed by the agency pursuant to s. 395.002(30)~~s.~~
9 ~~395.002(27)~~as a specialty psychiatric hospital.

10 Section 22. Section 394.67, Florida Statutes, is
11 amended to read:

12 394.67 Definitions.--~~As when~~ used in this part, ~~unless~~
13 ~~the context clearly requires otherwise,~~the term:

14 (1) "Advisory council" means a district advisory
15 council.

16 (2) "Agency" means the Agency for Health Care
17 Administration.

18 ~~(2) "Alcohol, drug abuse, and mental health planning~~
19 ~~council" or "council" means the council within a Department of~~
20 ~~Health and Rehabilitative Services district or subdistrict~~
21 ~~established in accordance with the provisions of this part for~~
22 ~~the purpose of assessing the alcohol, drug abuse, and mental~~
23 ~~health needs of the community and developing a plan to address~~
24 ~~those needs.~~

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

30 (4) "Client" means any individual receiving services
31 in any alcohol, drug abuse, or mental health facility,

1 program, or service, which facility, program, or service is
2 operated, funded, or regulated by the agency and the
3 department or regulated by the agency.

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

9 (6)(3) "Department" means the Department of Children
10 and Family Health and Rehabilitative Services.

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

18 (8)(4) "District administrator" means the person
19 appointed by the Secretary of Children and Family Health and
20 Rehabilitative Services for the purpose of administering a
21 department service district as set forth in s. 20.19.

22 (9)(5) "District plan" or "plan" means the combined
23 district alcohol, drug abuse, and mental health plan prepared
24 by the alcohol, drug abuse, and mental health planning council
25 and approved by the district administrator and governing
26 bodies in accordance with this part.

27 (10)(6) "Federal funds" means funds from federal
28 sources for alcohol, drug abuse, or mental health facilities
29 and programs, exclusive of federal funds that are deemed
30 eligible by the Federal Government, and are eligible through
31 state regulation, for matching purposes.

1 (11)~~(7)~~ "Governing body" means the chief legislative
2 body of a county, a board of county commissioners, or boards
3 of county commissioners in counties acting jointly, or their
4 counterparts in a charter government.

5 (12) "Licensed facility" means a facility licensed in
6 accordance with this chapter.

7 (13)~~(8)~~ "Local matching funds" means funds received
8 from governing bodies of local government, including city
9 commissions, county commissions, district school boards,
10 special tax districts, private hospital funds, private gifts,
11 both individual and corporate, and bequests and funds received
12 from community drives or any other sources.

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

16 (15)~~(9)~~ "Patient fees" means compensation received by
17 a community alcohol, drug abuse, or mental health facility for
18 services rendered to clients from any source of funds,
19 including city, county, state, federal, and private sources.

20 (16) "Premises" means those buildings, beds, and
21 facilities located at the main address of the licensee and all
22 other buildings, beds, and facilities for the provision of
23 acute or residential care which are located in such reasonable
24 proximity to the main address of the licensee as to appear to
25 the public to be under the dominion and control of the
26 licensee.

27 (17)~~(10)~~ "Program office" means the Alcohol, Drug
28 Abuse, and Mental Health Program Office of the Department of
29 Children and Family ~~Health and Rehabilitative~~ Services.

30 (18) "Residential treatment facility" means a facility
31 providing residential care and treatment to individuals

1 exhibiting symptoms of mental illness who are in need of a
2 24-hour-per-day, 7-day-a-week structured living environment,
3 respite care, or long-term community placement.

4 (19)~~(11)~~ "Service district" means a community service
5 district as established by the department under s. 20.19 for
6 the purpose of providing community alcohol, drug abuse, and
7 mental health services.

8 (20)~~(12)~~ "Service provider" means any agency in which
9 all or any portion of the programs or services set forth in s.
10 394.675 are carried out.

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

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

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

25 ~~(16) "Premises" means those buildings, beds, and~~
26 ~~facilities located at the main address of the licensee and all~~
27 ~~other buildings, beds, and facilities for the provision of~~
28 ~~acute or residential care located in such reasonable proximity~~
29 ~~to the main address of the licensee as to appear to the public~~
30 ~~to be under the dominion and control of the licensee.~~

31

1 ~~(17) "Client" means any individual receiving services~~
2 ~~in any alcohol, drug abuse, or mental health facility,~~
3 ~~program, or service, which facility, program, or service is~~
4 ~~operated, funded, or regulated by the Department of Health and~~
5 ~~Rehabilitative Services.~~

6 Section 23. Section 394.875, Florida Statutes, is
7 amended to read:

8 394.875 Crisis stabilization units and residential
9 treatment facilities; authorized services; license required;
10 penalties.--

11 (1)(a) The purpose of a crisis stabilization unit is
12 to stabilize and redirect a client to the most appropriate and
13 least restrictive community setting available, consistent with
14 the client's needs. Crisis stabilization units may screen,
15 assess, and admit for stabilization persons who present
16 themselves to the unit and persons who are brought to the unit
17 under s. 394.463. Clients may be provided 24-hour
18 observation, medication prescribed by a physician or
19 psychiatrist, and other appropriate services. Crisis
20 stabilization units shall provide services regardless of the
21 client's ability to pay and shall be limited in size to a
22 maximum of 30 beds.

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

26 (2) ~~After July 1, 1986,~~It is unlawful for any entity
27 to hold itself out as a crisis stabilization unit or a
28 residential treatment facility, or to act as a crisis
29 stabilization unit or a residential treatment facility, unless
30 it is licensed by the agency ~~department~~ pursuant to this
31 chapter.

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

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

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

11 (a) Homes for special services licensed under chapter
12 400;

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

14 (c) Residential child caring facilities licensed under
15 s. 409.175.

16 (6) The department, in consultation with the agency,
17 may establish multiple license classifications for residential
18 treatment facilities.

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

23 (8) The agency ~~department~~ may issue a license for a
24 crisis stabilization unit or short-term residential treatment
25 facility, certifying the number of authorized beds for such
26 facility as indicated by existing need and available
27 appropriations. The agency ~~department~~ may disapprove an
28 application for such a license if it determines that a
29 facility should not be licensed pursuant to the provisions of
30 this chapter. Any facility operating beds in excess of those
31 authorized by the agency ~~department~~ shall, upon demand of the

1 agency ~~department~~, reduce the number of beds to the authorized
2 number, forfeit its license, or provide evidence of a license
3 issued pursuant to chapter 395 for the excess beds.

4 (9) A children's crisis stabilization unit which does
5 not exceed 20 licensed beds and which provides separate
6 facilities or a distinct part of a facility, separate
7 staffing, and treatment exclusively for minors may be located
8 on the same premises as a crisis stabilization unit serving
9 adults. The department, in consultation with the agency,
10 shall adopt ~~promulgate~~ rules governing facility construction,
11 staffing and licensure requirements, and the operation of such
12 units for minors.

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

18 (11) Notwithstanding the other provisions of this
19 section, any facility licensed under chapters 396 and 397 for
20 detoxification, residential level I care, and outpatient
21 treatment may elect to license concurrently all of the beds at
22 such facility both for that purpose and as a long-term
23 residential treatment facility pursuant to this section, if
24 all of the following conditions are met:

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

27 (b) On January 1, 1993, the facility was licensed
28 under chapters 396 and 397 as a facility for detoxification,
29 residential level I care, and outpatient treatment of
30 substance abuse.

31

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

4 (d) The number of beds to be licensed under chapter
5 394 is equal to or less than the number of beds licensed under
6 chapters 396 and 397 as of January 1, 1993.

7 (e) The licensee agrees in writing to a condition
8 placed upon the license that the facility will limit its
9 treatment exclusively to law enforcement personnel and their
10 immediate families who are seeking admission on a voluntary
11 basis and who are exhibiting symptoms of posttraumatic stress
12 disorder or other mental health problems, including drug or
13 alcohol abuse, which are directly related to law enforcement
14 work and which are amenable to verbal treatment therapies; the
15 licensee agrees to coordinate the provision of appropriate
16 postresidential care for discharged individuals; and the
17 licensee further agrees in writing that a failure to meet any
18 condition specified in this paragraph shall constitute grounds
19 for a revocation of the facility's license as a residential
20 treatment facility.

21 (f) The licensee agrees that the facility will meet
22 all licensure requirements for a residential treatment
23 facility, including minimum standards for compliance with
24 lifesafety requirements, except those licensure requirements
25 which are in express conflict with the conditions and other
26 provisions specified in this subsection.

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

30
31

1 Any facility licensed under this subsection is not required to
2 provide any services to any persons except those included in
3 the specified conditions of licensure, and is exempt from any
4 requirements related to the 60-day or greater average length
5 of stay imposed on community-based residential treatment
6 facilities otherwise licensed under this chapter.

7 (12) 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 managing employee and financial
13 officer, or other similarly titled individual who is
14 responsible for the financial operation of the facility,
15 including billings for client care and services. The applicant
16 must comply with the procedures for level 2 background
17 screening as set forth in chapter 435, as well as the
18 requirements of s. 435.03(3).

19 (b) The agency may require background screening of any
20 other individual who is an applicant if the agency has
21 probable cause to believe that he or she has been convicted of
22 a crime or has committed any other offense prohibited under
23 the level 2 standards for screening set forth 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 healthcare 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 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 the requirements for disclosure of ownership and control
26 interests under the Medicaid or Medicare programs shall 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).

31

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

3 Section 24. Section 394.876, Florida Statutes, is
4 amended to read:

5 394.876 Applications.--

6 (1) Any person desiring to be licensed under this
7 chapter shall apply to the agency ~~department~~ on forms provided
8 by the agency ~~department~~. The application shall contain the
9 following:

10 (a) The name and address of the applicant, the name of
11 the unit or facility, and the address of the unit or facility.

12 (b)1. If the applicant is a partnership, association,
13 or other form of entity other than an individual or a
14 corporation, the name and address of each member or owner of
15 the entity.

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

20 ~~(c) Such information as the department determines to~~
21 ~~be necessary to establish the character and competency of the~~
22 ~~applicant and of the person who is or will be administrator of~~
23 ~~the unit or facility.~~

24 (c)(d) Such information as the department and the
25 agency find ~~determines~~ necessary to determine the ability of
26 the applicant to carry out its responsibilities under this
27 chapter.

28 (2) The applicant shall furnish proof satisfactory to
29 the agency ~~department~~ of its financial ability to operate the
30 unit or facility in accordance with this chapter. An
31 applicant for an original license shall submit a balance sheet

1 and a statement projecting revenues, expenses, taxes,
2 extraordinary items, and other credits and charges for the
3 first 6 months of operation.

4 (3) The applicant shall provide proof of liability
5 insurance coverage in amounts set by the department and the
6 agency by rule.

7 (4) The agency ~~department~~ shall accept proof of
8 accreditation by the Joint Commission on Accreditation of
9 Hospitals in lieu of the information required by subsection
10 (1).

11 Section 25. Section 394.877, Florida Statutes, is
12 amended to read:

13 394.877 Fees.--

14 (1) Each application for licensure or renewal must
15 ~~shall~~ be accompanied by a fee set by the department, in
16 consultation with the agency, by rule. Such fees shall be
17 reasonably calculated to cover only the cost of regulation
18 under this chapter.

19 (2) All fees collected under this section shall be
20 deposited in the ~~Mental Health Care Facility Licensing~~ Trust
21 Fund.

22 Section 26. Subsections (1), (2), (5), and (6) of
23 section 394.878, Florida Statutes, are amended to read:

24 394.878 Issuance and renewal of licenses.--

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

29 (2) A license is valid for a period of 1 year. An
30 applicant for renewal of a license shall apply to the agency
31

1 ~~department~~ no later than 90 days before expiration of the
2 current license.

3 (5) The agency ~~department~~ may issue a probationary
4 license to an applicant that has completed the application
5 requirements of this chapter but has not, at the time of the
6 application, developed an operational crisis stabilization
7 unit or residential treatment facility. The probationary
8 license shall expire 90 days after issuance and may once be
9 renewed for an additional 90-day period. The agency ~~department~~
10 may cancel a probationary license at any time.

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

17 Section 27. Section 394.879, Florida Statutes, is
18 amended to read:

19 394.879 Rules; enforcement.--

20 (1) The department, in consultation with the agency,
21 shall adopt reasonable rules to implement this chapter,
22 including, at a minimum, rules providing standards to ensure
23 that:

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

27 (b) Adequate space is provided each client of a
28 licensed facility.

29 (c) Licensed facilities are limited to an appropriate
30 number of beds.

31

1 (d) Each licensee establishes and implements adequate
2 infection control, housekeeping, sanitation, disaster
3 planning, and medical recordkeeping.

4 (e) Licensed facilities are established, organized,
5 and operated in accordance with programmatic standards of the
6 department.

7 (2) Minimum firesafety standards shall be established
8 and enforced by the State Fire Marshal in cooperation with the
9 department. Such standards shall be included in the rule
10 adopted by the department after consultation with the State
11 Fire Marshal.

12 (3) The department, in consultation with the agency,
13 shall allow any licensed facility in operation at the time of
14 adoption of any rule a reasonable period, not to exceed 1
15 year, to bring itself into compliance with such rule.

16 (4) The agency ~~department~~ may impose an administrative
17 penalty of no more than \$500 per day against any licensee that
18 violates any rule adopted pursuant to this section and may
19 suspend or revoke the license or deny the renewal application
20 of such licensee. In imposing such penalty, the agency
21 ~~department~~ shall consider the severity of the violation,
22 actions taken by the licensee to correct the violation, and
23 previous violations by the licensee. Fines collected under
24 this subsection shall be deposited in the Mental Health
25 Facility Licensing Trust Fund.

26 Section 28. Section 394.90, Florida Statutes, is
27 amended to read:

28 394.90 Inspection; right of entry; records.--

29 (1)(a) The department and the agency may enter and
30 inspect at any time a licensed facility to determine whether
31

1 the facility is in compliance with this chapter and the rules
2 of the department.

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

9 (c) Any application for licensure under this chapter
10 constitutes full permission for the department and the agency
11 to enter and inspect the premises of the applicant or licensee
12 at any time.

13 (2) For purposes of monitoring and investigation, the
14 department and the Agency for Health Care Administration shall
15 have access to the clinical records of any client of a
16 licensee or designated facility, the provisions of s. 394.4615
17 to the contrary notwithstanding.

18 (3) The agency ~~department~~ shall schedule periodic
19 inspections of licensees so as to minimize the cost to the
20 licensees and the disruption of the licensees' programs. This
21 subsection shall not be construed to limit the authority of
22 the department and the agency to inspect the facilities of a
23 licensee at any time.

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

31

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

16 (b) The agency ~~department~~ shall conduct compliance
17 investigations and sample validation inspections to evaluate
18 the inspection process of accrediting organizations to ensure
19 minimum standards are maintained as provided in Florida
20 statute and rule. The agency ~~department~~ may conduct a
21 lifesafety inspection in calendar years in which an
22 accrediting organization survey is not conducted and shall
23 conduct a full state inspection, including a lifesafety
24 inspection, if an accrediting organization survey has not been
25 conducted within the previous 36 months. The agency
26 ~~department~~, by accepting the survey or inspection of an
27 accrediting organization, does not forfeit its right to
28 perform inspections.

29 Section 29. Section 394.902, Florida Statutes, is
30 amended to read:

31

1 394.902 Denial, suspension, and revocation; other
2 remedies.--

3 (1) The agency ~~department~~ may issue an emergency order
4 suspending or revoking a license if the agency ~~department~~
5 determines that the continued operation of the licensed
6 facility presents a clear and present danger to the public
7 health or safety.

8 (2) The agency ~~department~~ may impose a moratorium on
9 elective admissions to a licensee or any program or portion of
10 a licensed facility if the agency ~~department~~ determines that
11 any condition in the facility presents a threat to the public
12 health or safety.

13 (3) If the agency ~~department~~ determines that an
14 applicant or licensee is not in compliance with this chapter
15 or the rules adopted under this chapter, the agency ~~department~~
16 may deny, suspend, or revoke the license or application or may
17 suspend, revoke, or impose reasonable restrictions on any
18 portion of the license. If a license is revoked, the licensee
19 is barred from submitting any application for licensure to the
20 agency ~~department~~ for a period of 6 months following
21 revocation.

22 (4) The agency ~~department~~ may maintain an action in
23 circuit court to enjoin the operation of any licensed or
24 unlicensed facility in violation of this chapter or the rules
25 adopted under this chapter.

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

28 Section 30. Subsections (1), (2), and (11) of section
29 394.903, Florida Statutes, are amended to read:

30 394.903 Receivership proceedings.--

31

1 (1) The agency, independently or in conjunction with
2 the department may petition a court of competent jurisdiction
3 for the appointment of a receiver for a crisis stabilization
4 unit or a residential treatment facility when any of the
5 following conditions exist:

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

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

14 (c) The agency ~~department~~ determines that conditions
15 exist in the unit or facility which present an imminent danger
16 to the health, safety, or welfare of the residents of the unit
17 or facility or a substantial probability that death or serious
18 physical harm would result therefrom. The agency ~~department~~
19 shall, whenever possible, facilitate the continued operation
20 of the program.

21 (d) The licensee cannot meet its financial obligations
22 for providing food, shelter, care, and utilities. Issuance of
23 bad checks or accumulation of delinquent bills for such items
24 as personnel salaries, food, drugs, or utilities constitutes
25 ~~shall constitute~~ prima facie evidence that the ownership of
26 the unit or facility lacks the financial ability to operate
27 the unit or facility in accordance with the requirements of
28 this chapter and all rules adopted under this chapter
29 hereunder.

30 (2) Petitions for receivership shall take precedence
31 over other court business unless the court determines that

1 some other pending proceeding, having similar statutory
2 precedence, shall have priority. A hearing shall be conducted
3 within 5 days after of the filing of the petition, at which
4 time all interested parties shall have the opportunity to
5 present evidence pertaining to the petition. The agency
6 ~~department~~ shall notify the owner or operator of the unit or
7 facility named in the petition of its filing and the dates for
8 the hearing. The court shall grant the petition only upon
9 finding that the health, safety, and welfare of residents of
10 the unit or facility would be threatened if a condition
11 existing at the time the petition was filed is permitted to
12 continue. A receiver shall not be appointed ex parte unless
13 the court determines that one or more of the conditions of
14 subsection (1) exist and that the owner or operator cannot be
15 found, that all reasonable means of locating the owner or
16 operator and notifying him or her of the petition and hearing
17 have been exhausted, or that the owner or operator after
18 notification of the hearing chooses not to attend. After such
19 findings, the court may appoint any person qualified by
20 education, training, or experience to carry out the
21 responsibilities of receiver pursuant to this section, except
22 that it shall not appoint any owner or affiliate of the unit
23 or facility which is in receivership. Prior to the
24 appointment as receiver of a person who is the operator,
25 manager, or supervisor of another unit or facility, the court
26 shall determine that the person can reasonably operate,
27 manage, or supervise more than one unit or facility. The
28 receiver may be appointed for up to 90 days, with the option
29 of petitioning the court for 30-day extensions. The receiver
30 may be selected from a list of persons qualified to act as
31 receivers developed by the agency ~~department~~ and presented to

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

29 (11) Nothing in this section shall be construed to
30 relieve any owner, operator, or employee of a unit or facility
31 placed in receivership of any civil or criminal liability

1 incurred, or any duty imposed by law, by reason of acts or
2 omissions of the owner, operator, or employee prior to the
3 appointment of a receiver; nor shall anything contained in
4 this section be construed to suspend during the receivership
5 any obligation of the owner, operator, or employee for payment
6 of taxes or other operating and maintenance expenses of the
7 unit or facility or of the owner, operator, or employee or any
8 other person for the payment of mortgages or liens. The owner
9 shall retain the right to sell or mortgage any unit or
10 facility under receivership, subject to approval of the court
11 which ordered the receivership. Receivership imposed under
12 the provisions of this chapter shall be subject to the ~~Mental~~
13 ~~Health Care Facility Licensing~~ Trust Fund pursuant to s.
14 394.904. The owner of a facility placed in receivership by
15 the court shall be liable for all expenses and costs incurred
16 by the ~~Mental Health Care Facility Licensing~~ Trust Fund which
17 occur as a result of the receivership.

18 Section 31. Section 394.904, Florida Statutes, is
19 amended to read:

20 394.904 ~~Mental Health Care Facility Licensing~~ Trust
21 Fund.--There is created in the State Treasury the ~~Mental~~
22 ~~Health Care Facility Licensing~~ Trust Fund. All moneys
23 collected by the agency ~~department~~ pursuant to this chapter
24 shall be deposited in the trust fund. Moneys in the trust
25 fund shall be appropriated to the agency ~~department~~ for the
26 purpose of covering the cost of regulation of facilities
27 licensed under this chapter and any other purpose related to
28 enforcement of this chapter.

29 Section 32. Subsections (1), (2), (3), (7), (8), and
30 (9) of section 394.907, Florida Statutes, are amended to read:

31

1 394.907 Community mental health centers; quality
2 assurance programs.--

3 (1) As used in this section, the term "community
4 mental health center" means a publicly funded, not-for-profit
5 center that ~~which~~ contracts with the department for the
6 provision of inpatient, outpatient, day treatment, or
7 emergency services.

8 (2) ~~Effective April 1, 1989,~~Any community mental
9 health center and any facility licensed pursuant to s. 394.875
10 shall have an ongoing quality assurance program. The purpose
11 of the quality assurance program shall be to objectively and
12 systematically monitor and evaluate the appropriateness and
13 quality of client care, to ensure that services are rendered
14 consistent with reasonable, prevailing professional standards
15 and to resolve identified problems.

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

20 (a) Standards for the provision of client care and
21 treatment practices;

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

23 (c) Policies and procedures for staff development;

24 (d) Standards for facility safety and maintenance;

25 (e) Procedures for peer review and resource
26 utilization;

27 (f) Policies and procedures for adverse incident
28 reporting to include verification of corrective action to
29 remediate or minimize incidents and for reporting such
30 incidents to the department by a timeframe as prescribed by
31 rule.

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

(7) The department shall have access to all records necessary to determine agency compliance with the provisions of this section. The records of quality assurance programs which relate solely to actions taken in carrying out the provisions of this section, and records obtained by the department to determine agency compliance with ~~the provisions of this section~~, are confidential and exempt from ~~the provisions of s. 119.07(1)~~. Such records are not admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Business and Professional Regulation and the appropriate regulatory board, nor shall such records be available to the public as part of the record of investigation for, and prosecution in disciplinary proceedings made available to the public by the Department of Business and Professional Regulation or the appropriate regulatory board. Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from ~~the provisions of s. 286.011~~.

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

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

Section 33. Section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.--As used in this chapter:

1 (1) "Accrediting organizations" means the Joint
2 Commission on Accreditation of Healthcare Organizations, the
3 American Osteopathic Association, the Commission on
4 Accreditation of Rehabilitation Facilities, and the
5 Accreditation Association for Ambulatory Health Care, Inc.

6 (2) "Adverse or untoward incident," for purposes of
7 reporting to the agency, means an event over which health care
8 personnel could exercise control, which is probably associated
9 in whole or in part with medical intervention rather than the
10 condition for which such intervention occurred, and which
11 causes injury to a patient, and which:

12 (a) Is not consistent with or expected to be a
13 consequence of such medical intervention;

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

16 (c) Occurs as the result of any other action or lack
17 of any other action on the part of the hospital or personnel
18 of the hospital;

19 (d) Results in a surgical procedure being performed on
20 the wrong patient; or

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

23 (3) "Agency" means the Agency for Health Care
24 Administration.

25 (4) "Ambulatory surgical center" means a facility the
26 primary purpose of which is to provide elective surgical care,
27 in which the patient is admitted to and discharged from such
28 facility within the same working day and is not permitted to
29 stay overnight, and which is not part of a hospital. However,
30 a facility existing for the primary purpose of performing
31 terminations of pregnancy, an office maintained by a physician

1 for the practice of medicine, or an office maintained for the
2 practice of dentistry shall not be construed to be an
3 ambulatory surgical center, provided that any facility or
4 office which is certified or seeks certification as a Medicare
5 ambulatory surgical center shall be licensed as an ambulatory
6 surgical center pursuant to s. 395.003.

7 (5) "Applicant" means an individual applicant, or any
8 officer, director, or agent, or any partner or shareholder
9 having an ownership interest equal to a 5-percent or greater
10 interest in the corporation, partnership, or other business
11 entity.

12 (6)(5) "Biomedical waste" means any solid or liquid
13 waste as defined in s. 381.0098(2)(a).

14 (7)(6) "Clinical privileges" means the privileges
15 granted to a physician or other licensed health care
16 practitioner to render patient care services in a hospital,
17 but does not include the privilege of admitting patients.

18 (8)(7) "Department" means the Department of Health and
19 Rehabilitative Services.

20 (9) "Director" means any member of the official board
21 of directors as reported in the organization's annual
22 corporate report to the Florida Department of State, or, if no
23 such report is made, any member of the operating board of
24 directors. The term excludes members of separate, restricted
25 boards that serve only in an advisory capacity to the
26 operating board.

27 (10)(8) "Emergency medical condition" means:

28 (a) A medical condition manifesting itself by acute
29 symptoms of sufficient severity, which may include severe
30 pain, such that the absence of immediate medical attention
31

1 could reasonably be expected to result in any of the
2 following:

3 1. Serious jeopardy to patient health, including a
4 pregnant woman or fetus.

5 2. Serious impairment to bodily functions.

6 3. Serious dysfunction of any bodily organ or part.

7 (b) With respect to a pregnant woman:

8 1. That there is inadequate time to effect safe
9 transfer to another hospital prior to delivery;

10 2. That a transfer may pose a threat to the health and
11 safety of the patient or fetus; or

12 3. That there is evidence of the onset and persistence
13 of uterine contractions or rupture of the membranes.

14 (11)~~(9)~~ "Emergency services and care" means medical
15 screening, examination, and evaluation by a physician, or, to
16 the extent permitted by applicable law, by other appropriate
17 personnel under the supervision of a physician, to determine
18 if an emergency medical condition exists and, if it does, the
19 care, treatment, or surgery by a physician necessary to
20 relieve or eliminate the emergency medical condition, within
21 the service capability of the facility.

22 (12)~~(10)~~ "General hospital" means any facility which
23 meets the provisions of subsection (14)~~(12)~~ and which
24 regularly makes its facilities and services available to the
25 general population.

26 (13)~~(11)~~ "Governmental unit" means the state or any
27 county, municipality, or other political subdivision, or any
28 department, division, board, or other agency of any of the
29 foregoing.

30 (14)~~(12)~~ "Hospital" means any establishment that:
31

1 (a) Offers services more intensive than those required
2 for room, board, personal services, and general nursing care,
3 and offers facilities and beds for use beyond 24 hours by
4 individuals requiring diagnosis, treatment, or care for
5 illness, injury, deformity, infirmity, abnormality, disease,
6 or pregnancy; and

7 (b) Regularly makes available at least clinical
8 laboratory services, diagnostic X-ray services, and treatment
9 facilities for surgery or obstetrical care, or other
10 definitive medical treatment of similar extent.

11
12 However, the provisions of this chapter do not apply to any
13 institution conducted by or for the adherents of any
14 well-recognized church or religious denomination that depends
15 exclusively upon prayer or spiritual means to heal, care for,
16 or treat any person. For purposes of local zoning matters,
17 the term "hospital" includes a medical office building located
18 on the same premises as a hospital facility, provided the land
19 on which the medical office building is constructed is zoned
20 for use as a hospital; provided the premises were zoned for
21 hospital purposes on January 1, 1992.

22 (15)~~(13)~~ "Hospital bed" means a hospital accommodation
23 which is ready for immediate occupancy, or is capable of being
24 made ready for occupancy within 48 hours, excluding provision
25 of staffing, and which conforms to minimum space, equipment,
26 and furnishings standards as specified by rule of the
27 department for the provision of services specified in this
28 section to a single patient.

29 (16)~~(14)~~ "Initial denial determination" means a
30 determination by a private review agent that the health care
31

1 services furnished or proposed to be furnished to a patient
2 are inappropriate, not medically necessary, or not reasonable.

3 (17)~~(15)~~ "Injury," for purposes of reporting to the
4 agency, means any of the following outcomes if caused by an
5 adverse or untoward incident:

- 6 (a) Death;
- 7 (b) Brain damage;
- 8 (c) Spinal damage;
- 9 (d) Permanent disfigurement;
- 10 (e) Fracture or dislocation of bones or joints;
- 11 (f) Any condition requiring definitive or specialized
12 medical attention which is not consistent with the routine
13 management of the patient's case or patient's preexisting
14 physical condition;
- 15 (g) Any condition requiring surgical intervention to
16 correct or control;
- 17 (h) Any condition resulting in transfer of the
18 patient, within or outside the facility, to a unit providing a
19 more acute level of care;
- 20 (i) Any condition that extends the patient's length of
21 stay; or
- 22 (j) Any condition that results in a limitation of
23 neurological, physical, or sensory function which continues
24 after discharge from the facility.

25 (18)~~(16)~~ "Intensive residential treatment programs for
26 children and adolescents" means a specialty hospital
27 accredited by the Joint Commission on Accreditation of
28 Healthcare Organizations which provides 24-hour care and which
29 has the primary functions of diagnosis and treatment of
30 patients under the age of 18 having psychiatric disorders in
31

1 order to restore such patients to an optimal level of
2 functioning.

3 (19)~~(17)~~ "Licensed facility" means a hospital or
4 ambulatory surgical center licensed in accordance with this
5 chapter.

6 (20)~~(18)~~ "Lifesafety" means the control and prevention
7 of fire and other life-threatening conditions on a premises
8 for the purpose of preserving human life.

9 (21) "Managing employee" means the administrator or
10 other similarly titled individual who is responsible for the
11 daily operation of the facility.

12 (22)~~(19)~~ "Medical staff" means physicians licensed
13 under chapter 458 or chapter 459 with privileges in a licensed
14 facility, as well as other licensed health care practitioners
15 with clinical privileges as approved by a licensed facility's
16 governing board.

17 (23)~~(20)~~ "Medically necessary transfer" means a
18 transfer made necessary because the patient is in immediate
19 need of treatment for an emergency medical condition for which
20 the facility lacks service capability or is at service
21 capacity.

22 (24)~~(21)~~ "Person" means any individual, partnership,
23 corporation, association, or governmental unit.

24 (25)~~(22)~~ "Premises" means those buildings, beds, and
25 equipment located at the address of the licensed facility and
26 all other buildings, beds, and equipment for the provision of
27 hospital or ambulatory surgical care located in such
28 reasonable proximity to the address of the licensed facility
29 as to appear to the public to be under the dominion and
30 control of the licensee.

31

1 (26)~~(23)~~ "Private review agent" means any person or
2 entity which performs utilization review services for
3 third-party payors on a contractual basis for outpatient or
4 inpatient services. However, the term shall not include
5 full-time employees, personnel, or staff of health insurers,
6 health maintenance organizations, or hospitals, or wholly
7 owned subsidiaries thereof or affiliates under common
8 ownership, when performing utilization review for their
9 respective hospitals, health maintenance organizations, or
10 insureds of the same insurance group. For this purpose,
11 health insurers, health maintenance organizations, and
12 hospitals, or wholly owned subsidiaries thereof or affiliates
13 under common ownership, include such entities engaged as
14 administrators of self-insurance as defined in s. 624.031.

15 (27)~~(24)~~ "Service capability" means all services
16 offered by the facility where identification of services
17 offered is evidenced by the appearance of the service in a
18 patient's medical record or itemized bill.

19 (28)~~(25)~~ "At service capacity" means the temporary
20 inability of a hospital to provide a service which is within
21 the service capability of the hospital, due to maximum use of
22 the service at the time of the request for the service.

23 (29)~~(26)~~ "Specialty bed" means a bed, other than a
24 general bed, designated on the face of the hospital license
25 for a dedicated use.

26 (30)~~(27)~~ "Specialty hospital" means any facility which
27 meets the provisions of subsection(14)~~(12)~~, and which
28 regularly makes available either:

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

1 (b) A restricted range of services appropriate to the
2 diagnosis, care, and treatment of patients with specific
3 categories of medical or psychiatric illnesses or disorders;
4 or

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

7 (31)~~(28)~~ "Stabilized" means, with respect to an
8 emergency medical condition, that no material deterioration of
9 the condition is likely, within reasonable medical
10 probability, to result from the transfer of the patient from a
11 hospital.

12 (32)~~(29)~~ "Utilization review" means a system for
13 reviewing the medical necessity or appropriateness in the
14 allocation of health care resources of hospital services given
15 or proposed to be given to a patient or group of patients.

16 (33)~~(30)~~ "Utilization review plan" means a description
17 of the policies and procedures governing utilization review
18 activities performed by a private review agent.

19 (34)~~(31)~~ "Validation inspection" means an inspection
20 of the premises of a licensed facility by the agency to assess
21 whether a review by an accrediting organization has adequately
22 evaluated the licensed facility according to minimum state
23 standards.

24 Section 34. Section 395.0055, Florida Statutes, is
25 created to read:

26 395.0055 Background screening.--Each applicant for
27 licensure must comply with the following requirements:

28 (1) Upon receipt of a completed, signed, and dated
29 application, the agency shall require background screening of
30 the managing employee in accordance with the level 2 standards
31

1 for screening set forth in chapter 435, as well as the
2 requirements of s. 435.03(3).

3 (2) The agency may require background screening for a
4 member of the board of directors of the licensee, or an
5 officer or an individual owning 5 percent or more of the
6 licensee, if the agency has probable cause to believe that
7 such individual has been convicted of an offense prohibited
8 under the level 2 standards for screening set forth in chapter
9 435.

10 (3) 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 health care licensure requirements of this state is acceptable
14 in fulfillment of subsection (1).

15 (4) 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
24 standard license may be granted to the applicant upon the
25 agency's receipt of a report of the results of the Federal
26 Bureau of Investigation background screening for each
27 individual required by this section to undergo background
28 screening which confirms that all standards have been met, or
29 upon the granting of a disqualification exemption by the
30 agency as set forth in chapter 435. Any other person who is
31 required to undergo level 2 background screening may serve in

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

7 (5) 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 disclosure of ownership and control interest requirements of
12 the Medicaid or Medicare programs shall be accepted in lieu of
13 this submission.

14 (6) 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.

20 (7) This section does not apply to a director of a
21 not-for-profit corporation or organization if the director
22 serves solely in a voluntary capacity for the corporation or
23 organization, does not regularly take part in the day-to-day
24 operational decisions of the corporation or organization,
25 receives no remuneration for his or her services on the
26 corporation or organization's board of directors, and has no
27 financial interest and has no family members with a financial
28 interest in the corporation or organization, provided that the
29 director and the not-for-profit corporation or organization
30 include in the application a statement affirming that the
31

1 director's relationship to the corporation satisfies the
2 requirements of this subsection.

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

10 (9) The agency may deny or revoke licensure if the
11 applicant:

12 (a) Has falsely represented a material fact in the
13 application required by subsection (5) or subsection (6), or
14 has omitted any material fact from the application required by
15 subsection (5) or subsection (6); or

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

18 (10) An application for license renewal must contain
19 the information required under subsections (5) and (6).

20 Section 35. Present subsections (4), (5), (6), (7),
21 (8), and (9) of section 395.0199, Florida Statutes, are
22 renumbered as subsections (5), (6), (7), (8), (9), and (10),
23 respectively, and a new subsection (4) is added to that
24 section, to read:

25 395.0199 Private utilization review.--

26 (4) Each applicant for registration must comply with
27 the 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 operation of the
2 entity. The applicant must comply with the procedures for
3 level 2 background screening as set forth in chapter 435, as
4 well as the requirements of s. 435.03(3).

5 (b) The agency may require background screening of any
6 other individual who is an applicant, if the agency has
7 probable cause to believe that he or she has been convicted of
8 a crime or has committed any other offense prohibited under
9 the level 2 standards for screening set forth 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 health care licensure requirements of this state is acceptable
14 in fulfillment of the requirements of paragraph (a).

15 (d) A provisional registration 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 registration 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 registration may not be granted to an applicant
2 if the applicant or managing employee has been found guilty
3 of, 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 the registration if
9 any 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 registration renewal must
18 contain the information required under paragraphs (e) and (f).

19 Section 36. Paragraph (b) of subsection (1) of section
20 400.051, Florida Statutes, is amended to read:

21 400.051 Homes or institutions exempt from the
22 provisions of this part.--

23 (1) The following shall be exempt from the provisions
24 of this part:

25 (b) Any hospital, as defined in s. 395.002(12)~~s.~~
26 ~~395.002(10)~~, that is licensed under chapter 395.

27 Section 37. Paragraph (a) of subsection (2) of section
28 400.071, Florida Statutes, is amended, present subsections
29 (4), (5), (6), (7), and (8) of that section are redesignated
30 as subsections (5), (6), (7), (8), and (9), respectively, and
31 a new subsection (4) is added to that section, to read:

1 400.071 Application for license.--

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

4 (a) The name, address, and social security number of
5 the applicant if an individual; if the applicant is a firm,
6 partnership, or association, its name, address, and employer
7 identification number (EIN), and the name and address of every
8 member; if the applicant is a corporation, its name, address,
9 and employer identification number (EIN), and the name and
10 address of its director and officers and of each person having
11 at least a 5-percent ~~10-percent~~ interest in the corporation;
12 and the name by which the facility is to be known.

13 (4) 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 has probable cause to believe that such individual
29 has been convicted of an offense prohibited under the level 2
30 standards 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 health care or assisted living licensure requirements of this
5 state is acceptable in fulfillment of paragraph (a). Proof of
6 compliance with background screening which has been submitted
7 within the previous 5 years to fulfill the requirements of the
8 Department of Insurance pursuant to chapter 651 as part of an
9 application for a certificate of authority to operate a
10 continuing care retirement community is acceptable in
11 fulfillment of the Department of Law Enforcement and Federal
12 Bureau of Investigation background check.

13 (d) A provisional license 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, or a request for a disqualification
20 exemption has been submitted to the agency as set forth in
21 chapter 435 but a response has not yet been issued. A license
22 may be granted to the applicant upon the agency's receipt of a
23 report of the results of the Federal Bureau of Investigation
24 background screening for each individual required by this
25 section to undergo background screening which confirms that
26 all standards have been met, or upon the granting of a
27 disqualification exemption by the agency as set forth in
28 chapter 435. Any other person who is required to undergo
29 level 2 background screening may serve in his or her capacity
30 pending the agency's receipt of the report from the Federal
31 Bureau of Investigation; however, the person may not continue

1 to serve if the report indicates any violation of background
2 screening standards and a disqualification exemption has not
3 been requested of and granted by the agency as set forth in
4 chapter 435.

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

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

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

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

3 400.411 Initial application for license; provisional
4 license.--

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

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

14 (3)~~(2)~~ The application must ~~shall~~ be signed by the
15 applicant under oath and must ~~shall~~ contain the following:

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

19 ~~1.~~ If the applicant is a firm, partnership, or
20 association, the application shall contain the name, address,
21 date of birth, and social security number of every member
22 thereof.

23 ~~2.~~ If the applicant is a corporation, the application
24 shall contain the corporation's ~~its~~ name and address; ~~the~~
25 name, address, date of birth, and social security number of
26 each of its directors and officers; ~~and~~ and the name and address
27 of each person having at least a 5-percent ownership
28 ~~10-percent~~ interest in the corporation.

29 (b) The name and address of any professional service,
30 firm, association, partnership, or corporation that is to
31 provide goods, leases, or services to the facility ~~for which~~

1 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater
2 ownership interest in the service, firm, association,
3 partnership, or corporation is owned by a person whose name
4 must be listed on the application under paragraph (a).

5 (c) ~~Information that provides a source to establish~~
6 ~~the suitable character, financial stability, and competency of~~
7 ~~the applicant and of each person specified in the application~~
8 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~
9 ~~least a 10-percent interest in the firm, partnership,~~
10 ~~association, or corporation and, if applicable, of the~~
11 ~~administrator, including~~ The name and address of any long-term
12 care facility with which the applicant, or administrator, or
13 financial officer has been affiliated through ownership or
14 employment within 5 years of the date of this license ~~the~~
15 ~~application for a license~~; and a signed affidavit disclosing
16 any financial or ownership interest that the applicant, or any
17 person listed in paragraph (a) principal, partner, or
18 ~~shareholder thereof~~, holds or has held within the last 5 years
19 in any ~~other~~ facility licensed under this part, or in any
20 other entity licensed by this ~~the~~ state or another state to
21 provide health or residential care, which facility or entity
22 closed or ceased to operate as a result of financial problems.

23 (d) 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 (e) ~~(d)~~ The names and addresses of other persons of
30 whom the agency may inquire as to the character, and
31 reputation, and financial responsibility of the owner

1 ~~applicant~~ and, if different from the applicant, ~~applicable~~, of
2 the administrator and financial officer.

3 ~~(e) The names and addresses of other persons of whom~~
4 ~~the agency may inquire as to the financial responsibility of~~
5 ~~the applicant.~~

6 (f) Identification of all other homes or facilities,
7 including the addresses and the license or licenses under
8 which they operate, if applicable, which are currently
9 operated by the applicant or administrator and which provide
10 housing, meals, and personal services to residents ~~adults~~.

11 ~~(g) Such other reasonable information as may be~~
12 ~~required by the agency to evaluate the ability of the~~
13 ~~applicant to meet the responsibilities entailed under this~~
14 ~~part.~~

15 (g)(h) The location of the facility for which a
16 license is sought and documentation, signed by the appropriate
17 local government official, which states that the applicant has
18 met local zoning requirements.

19 (h)(i) The name, address, date of birth, social
20 security number, education, and experience of the
21 administrator, if different from the applicant.

22 (4)(3) The applicant shall furnish satisfactory proof
23 of financial ability to operate and conduct the facility in
24 accordance with the requirements of this part. ~~An applicant~~
25 ~~applying for an initial license shall submit a balance sheet~~
26 ~~setting forth the assets and liabilities of the owner and a~~
27 ~~statement projecting revenues, expenses, taxes, extraordinary~~
28 ~~items, and other credits or charges for the first 12 months of~~
29 ~~operation of the facility.~~

30 (5)(4) If the applicant is a continuing care facility
31 certified under ~~offers continuing care agreements, as defined~~

1 ~~in~~ chapter 651, a copy of the facility's proof shall be
2 ~~furnished that the applicant has obtained a~~ certificate of
3 authority must be provided ~~as required for operation under~~
4 ~~that chapter.~~

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

7 (7)(6) If the applicant is a community residential
8 home, the applicant must provide proof that it has met the
9 requirements specified in chapter 419 ~~shall apply to community~~
10 ~~residential homes zoned single-family or multifamily.~~

11 (8)(7) The applicant must provide the agency with
12 proof of legal right to occupy the property. ~~This proof may~~
13 ~~include, but is not limited to, copies of recorded warranty~~
14 ~~deeds, or copies of lease or rental agreements, contracts for~~
15 ~~deeds, quitclaim deeds, or other such documentation.~~

16 (9)(8) The applicant must furnish proof that the
17 facility has received a satisfactory firesafety inspection.
18 The local ~~fire marshal or other~~ authority having jurisdiction
19 or the State Fire Marshal must conduct the inspection within
20 30 days after ~~the~~ written request by the applicant. ~~If an~~
21 ~~authority having jurisdiction does not have a certified~~
22 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
23 ~~inspection.~~

24 (10) The applicant must furnish proof of compliance
25 with level 2 background screening as required under s.
26 400.4174.

27 (11)(9) A provisional license may be issued to an
28 applicant making initial application for licensure or making
29 application for a change of ownership. A provisional license
30 shall be limited in duration to a specific period of time not
31 to exceed 6 months, as determined by the agency.

1 ~~(12)(10)~~ A ~~No~~ county or municipality may not ~~shall~~
2 issue an occupational license that ~~which~~ is being obtained for
3 the purpose of operating a facility regulated under this part
4 without first ascertaining that the applicant has been
5 licensed to operate such facility at the specified location or
6 locations by the agency. The agency shall furnish to local
7 agencies responsible for issuing occupational licenses
8 sufficient instruction for making such ~~the above-required~~
9 determinations.

10 (13) The department may by rule establish application
11 procedures, identify forms, and specify documentation
12 necessary to administer this section.

13 Section 39. Section 400.414, Florida Statutes, is
14 amended to read:

15 400.414 Denial, revocation, or suspension of license;
16 imposition of administrative fine; grounds.--

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

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

26 (a) An intentional or negligent act seriously
27 affecting the health, safety, or welfare of a resident of the
28 facility.

29 (b) The determination by the agency that ~~the facility~~
30 ~~owner or administrator is not of suitable character or~~
31 ~~competency, or that the owner lacks the financial ability, to~~

1 provide continuing adequate care to residents, ~~pursuant to the~~
2 ~~information obtained through s. 400.411, s. 400.417, or s.~~
3 ~~400.434.~~

4 (c) Misappropriation or conversion of the property of
5 a resident of the facility.

6 (d) Failure to follow the criteria and procedures
7 provided under part I of chapter 394 relating to the
8 transportation, voluntary admission, and involuntary
9 examination of a facility resident.

10 (e) Five or more ~~repeated or recurring identical or~~
11 ~~similar~~ class III violations that are similar or identical to
12 violations of this part which were identified by the agency
13 during the previous survey last biennial inspection,
14 monitoring visit, or complaint investigation and which, in the
15 aggregate, affect the health, safety, or welfare of the
16 facility residents.

17 (f) A determination that a person subject to level 2
18 background screening under s. 400.4174(1) does not meet the
19 screening standards of s. 435.04 or that the facility is
20 retaining an employee subject to level 1 background screening
21 standards under s. 400.4174(2) who does not meet the screening
22 standards of s. 435.03 and for whom exemptions from
23 disqualification have not been provided by the agency.

24 (g)~~(f)~~ A confirmed report of adult abuse, neglect, or
25 exploitation, as defined in s. 415.102, which has been upheld
26 following a chapter 120 hearing or a waiver of such
27 proceedings where the perpetrator is an employee, volunteer,
28 administrator, or owner, or otherwise has access to the
29 residents of a facility, and the owner or administrator has
30 not taken action to remove the perpetrator. Exemptions ~~from~~
31 ~~disqualification~~ may be granted as set forth in s. 435.07. ~~No~~

1 ~~administrative action may be taken against the facility if the~~
2 ~~perpetrator is granted an exemption.~~

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

4 (i)(h) Failure of the license applicant, the licensee
5 during relicensure, or ~~failure of~~ a licensee that holds a
6 provisional ~~an initial or change of ownership~~ license, to meet
7 minimum license ~~standards or the~~ requirements of ~~rules adopted~~
8 ~~under~~ this part.

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

18 (k)(j) An intentional or negligent life-threatening
19 act in violation of the uniform firesafety standards for
20 assisted living facilities or other firesafety standards
21 ~~established by the State Fire Marshal~~, that threatens the
22 health, safety, or welfare of a resident of a facility, as
23 communicated to the agency by the ~~State Fire Marshal~~, a local
24 ~~fire marshal~~, or other authority having jurisdiction or the
25 State Fire Marshal.

26 (l) Exclusion, permanent suspension, or termination
27 from the Medicare or Medicaid programs.

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

31

1 ~~(2)(4)~~ Upon notification by the ~~State Fire Marshal,~~
2 local ~~fire marshal, or other~~ authority having jurisdiction or
3 by the State Fire Marshal, the agency may deny or revoke the
4 license of an assisted living a facility that fails to correct
5 cited fire code violations ~~issued by the State Fire Marshal, a~~
6 ~~local fire marshal, or other authority having jurisdiction,~~
7 that affect or threaten the health, safety, or welfare of a
8 resident of a facility.

9 ~~(3)(5)~~ The agency may deny a license to an applicant
10 who owns or owed 25 percent or more of, or operates or
11 operated, an assisted living a facility which, during the 5
12 years prior to the application for a license, has had a
13 license denied, suspended, or revoked ~~pursuant to subsection~~
14 ~~(2)~~, or, during the 2 years prior to the application for a
15 license, has had a moratorium imposed on admissions, has had
16 an injunctive proceeding initiated against it, has had a
17 receiver appointed, was closed due to financial inability to
18 operate, or has an outstanding fine assessed under this part.

19 ~~(4)(6)~~ An action taken by the agency to suspend, deny,
20 or revoke a facility's license under this part, in which the
21 agency claims that the facility owner or an employee of the
22 facility has threatened the health, safety, or welfare of a
23 resident of the facility, shall, upon receipt of the
24 facility's request for a hearing, be heard by the Division of
25 Administrative Hearings of the Department of Management
26 Services within 120 days after the request for a hearing,
27 unless that time period is waived by both parties. The
28 administrative law judge must render a decision within 30 days
29 after the hearing.

30 ~~(5)(7)~~ The agency shall provide to the Division of
31 Hotels and Restaurants of the Department of Business and

1 Professional Regulation, on a monthly basis, a list of those
2 assisted living facilities that ~~which~~ have had their licenses
3 denied, suspended, or revoked or that ~~which~~ are involved in an
4 appellate proceeding pursuant to s. 120.60 related to the
5 denial, suspension, or revocation of a license.

6 Section 40. Subsection (1) of section 400.417, Florida
7 Statutes, is amended to read:

8 400.417 Expiration of license; renewal; conditional
9 license.--

10 (1) Biennial licenses ~~issued for the operation of a~~
11 ~~facility~~, unless sooner suspended or revoked, shall expire
12 ~~automatically~~ 2 years from the date of issuance. The agency
13 shall notify the facility by certified mail at least 120 days
14 prior to ~~the expiration of the license~~ that a renewal license
15 ~~relicensure~~ is necessary to continue operation. Ninety days
16 prior to the expiration date, an application for renewal shall
17 be submitted to the agency. A license shall be renewed upon
18 the filing of an application on forms furnished by the agency
19 if the applicant has first met the requirements established
20 under this part and all rules adopted ~~promulgated~~ under this
21 part. The failure to file a timely renewal application shall
22 result in a late fee charged to the facility in an amount
23 equal to 50 percent of the current fee ~~in effect on the last~~
24 ~~preceding regular renewal date~~. Late fees shall be deposited
25 into the Health Care Trust Fund as provided in s. 400.418.
26 The facility shall file with the application satisfactory
27 proof of ability to operate and conduct the facility in
28 accordance with the requirements of this part. An applicant
29 for renewal of a license must furnish proof that the facility
30 has received a satisfactory firesafety inspection, conducted
31 by the local ~~fire marshal or other~~ authority having

1 jurisdiction or the State Fire Marshal, within the preceding
2 12 months and an affidavit of compliance with the background
3 screening requirements of s. 400.4174. An applicant for
4 renewal of a license who has complied ~~on the initial license~~
5 ~~application~~ with the provisions of s. 400.411 with respect to
6 proof of financial ability to operate shall not be required to
7 provide further proof of financial ability on renewal
8 ~~applications~~ unless the facility or any other facility owned
9 or operated in whole or in part by the same person or business
10 entity has demonstrated financial instability as evidenced by
11 bad checks, delinquent accounts, or nonpayment of withholding
12 taxes, utility expenses, or other essential services or unless
13 the agency suspects that the facility is not financially
14 stable as a result of the annual survey or complaints from the
15 public or a report from the State Long-Term Care Ombudsman
16 Council established under s. 400.0067. Each facility shall
17 report to the agency any adverse court action concerning the
18 facility's financial viability, within 7 days after its
19 occurrence. The agency shall have access to books, records,
20 and any other financial documents maintained by the facility
21 to the extent necessary to determine the facility's financial
22 stability ~~carry out the purpose of this section~~. The agency
23 may not renew a license for the operation of a facility ~~shall~~
24 ~~not be renewed~~ if the licensee has any outstanding fines
25 assessed pursuant to this part which are in final order
26 status.

27 Section 41. Section 400.4174, Florida Statutes, is
28 amended to read:

29 400.4174 Background screening; exemptions; reports of
30 abuse in facilities.--

31

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

5 1. The facility owner if an individual; the
6 administrator; and the financial officer.

7 2. An officer or board member if the facility owner is
8 a firm, corporation, partnership, or association, or any
9 person owning 5 percent or more of the facility if the agency
10 has probable cause to believe that such person has been
11 convicted of any offense prohibited by s. 435.04. For each
12 officer, board member, or person owning 5 percent or more who
13 has been convicted of any such offense, the facility shall
14 submit to the agency a description and explanation of the
15 conviction at the time of license application. This
16 subparagraph does not apply to a board member of a
17 not-for-profit corporation or organization if the board member
18 serves solely in a voluntary capacity, does not regularly take
19 part in the day-to-day operational decisions of the
20 corporation or organization, receives no remuneration for his
21 or her services, and has no financial interest and has no
22 family members with a financial interest in the corporation or
23 organization, provided that the board member and facility
24 submit a statement affirming that the board member's
25 relationship to the facility satisfies the requirements of
26 this subparagraph.

27 (b) Proof of compliance with level 2 screening
28 standards which has been submitted within the previous 5 years
29 to meet any facility or professional licensure requirements of
30 the agency or the Department of Health satisfies the
31 requirements of this subsection, provided that such proof is

1 accompanied, under penalty of perjury, by an affidavit of
2 compliance with the provisions of chapter 435. Proof of
3 compliance with the background screening requirements of the
4 Department of Insurance for applicants for a certificate of
5 authority to operate a continuing care retirement community
6 under chapter 651, submitted within the last 5 years,
7 satisfies the Department of Law Enforcement and Federal Bureau
8 of Investigation portions of a level 2 background check.

9 (c) The agency may grant a provisional license to a
10 facility applying for an initial license when each individual
11 required by this subsection to undergo screening has completed
12 the abuse registry and Department of Law Enforcement
13 background checks, but has not yet received results from the
14 Federal Bureau of Investigation, or when a request for an
15 exemption from disqualification has been submitted to the
16 agency pursuant to s. 435.07, but a response has not been
17 issued.

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

25 (a) Proof of compliance with level 1 screening
26 requirements obtained to meet any professional license
27 requirements in this state is provided and accompanied, under
28 penalty of perjury, by a copy of the person's current
29 professional license and an affidavit of current compliance
30 with the background screening requirements.

31

1 (b) The person required to be screened 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 which exceeds 180 days, and proof of compliance with the level
5 1 screening requirement which is no more than 2 years old is
6 provided. Proof of compliance shall be provided directly from
7 one employer or contractor to another, and not from the person
8 screened. Upon request, a copy of screening results shall be
9 provided by the employer retaining documentation of the
10 screening to the person screened.

11 (c) The person required to be screened is employed by
12 a corporation or business entity or related corporation or
13 business entity that owns, operates, or manages more than one
14 facility or agency licensed under chapter 400, and for whom a
15 level 1 screening was conducted by the corporation or business
16 entity as a condition of initial or continued employment.

17 (3) When an employee, volunteer, administrator, or
18 owner of a facility is the subject of ~~has~~ a confirmed report
19 of adult abuse, neglect, or exploitation, as defined in s.
20 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~
21 and the protective investigator knows that the individual is
22 an employee, volunteer, administrator, or owner of a facility,
23 the agency shall be notified of the confirmed report.

24 Section 42. Section 400.4176, Florida Statutes, is
25 amended to read:

26 400.4176 Notice of change of administrator.--If,
27 during the period for which a license is issued, the owner
28 changes administrators, the owner must notify the agency of
29 the change within 45 days ~~thereof~~ and ~~must~~ provide
30 documentation that the new administrator has completed the
31 applicable core educational requirements under s. 400.452.

1 Background screening shall be completed on any new
2 administrator ~~to establish that the individual is of suitable~~
3 ~~character~~ as specified in s. 400.4174 ~~ss. 400.411(2)(c) and~~
4 ~~400.456~~.

5 Section 43. Section 400.461, Florida Statutes, is
6 amended to read:

7 400.461 Short title; purpose.--

8 (1) This part, consisting of ss. 400.461-400.518 ~~ss.~~
9 ~~400.461-400.515~~, may be cited as the "Home Health Services
10 Act."

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

16 Section 44. A new subsection (4) is added to section
17 400.471, Florida Statutes, and present subsections (4), (5),
18 (6), (7), (8), (9), and (10) of section 400.506, Florida
19 Statutes, are redesignated as subsections (5), (6), (7), (8),
20 (9), (10), and (11), respectively, to read:

21 400.471 Application for license; fee; provisional
22 license; temporary permit.--

23 (4) Each applicant for licensure must comply with the
24 following requirements:

25 (a) Upon receipt of a completed, signed, and dated
26 application, the agency shall require background screening of
27 the applicant, in accordance with the level 2 standards for
28 screening set forth in chapter 435. As used in this
29 subsection, the term "applicant" means the administrator, or a
30 similarly titled person who is responsible for the day-to-day
31 operation of the licensed home health agency, and the

1 financial officer, or similarly titled individual who is
2 responsible for the financial operation of the licensed home
3 health agency.

4 (b) The agency may require background screening for a
5 member of the board of directors of the licensee or an officer
6 or an individual owning 5 percent or more of the licensee if
7 the agency reasonably suspects that such individual has been
8 convicted of an offense prohibited under the level 2 standards
9 for screening set forth 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 health care or assisted living licensure requirements of this
14 state is acceptable in fulfillment of paragraph (a). Proof of
15 compliance with background screening which has been submitted
16 within the previous 5 years to fulfill the requirements of the
17 Department of Insurance pursuant to chapter 651 as part of an
18 application for a certificate of authority to operate a
19 continuing care retirement community is acceptable in
20 fulfillment of the Department of Law Enforcement and Federal
21 Bureau of Investigation background check.

22 (d) A provisional license may be granted to an
23 applicant when each individual required by this section to
24 undergo background screening has met the standards for the
25 abuse registry background check and the Department of Law
26 Enforcement background check, but the agency has not yet
27 received background screening results from the Federal Bureau
28 of Investigation. A standard license may be granted to the
29 licensee upon the agency's receipt of a report of the results
30 of the Federal Bureau of Investigation background screening
31 for each individual required by this section to undergo

1 background screening which confirms that all standards have
2 been met, or upon the granting of a disqualification exemption
3 by the agency as set forth in chapter 435. Any other person
4 who is required to undergo level 2 background screening may
5 serve in his or her capacity pending the agency's receipt of
6 the report from the Federal Bureau of Investigation. However,
7 the person may not continue to serve if the report indicates
8 any violation of background screening standards and a
9 disqualification exemption has not been requested of and
10 granted by the agency 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 licensee or
14 potential licensee from the Medicare or Medicaid programs.
15 Proof of compliance with the requirements for disclosure of
16 ownership and control interest under the Medicaid or Medicare
17 programs may be 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, administrator, or financial officer has been
7 found guilty of, regardless of adjudication, or has entered a
8 plea of nolo contendere or guilty to, any offense prohibited
9 under the level 2 standards for screening set forth in chapter
10 435, unless an exemption from disqualification has been
11 granted by 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 been or is currently excluded, suspended,
19 terminated from, or has involuntarily withdrawn from
20 participation in this state's Medicaid program, or the
21 Medicaid program of any other state, or from participation in
22 the Medicare program or any other governmental or private
23 health care or health insurance program.

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

26 Section 45. Present subsections (2), (3), (4), (5),
27 (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), and
28 (16) of section 400.506, Florida Statutes, are redesignated as
29 subsections (3), (4), (5), (6), (7), (8), (9), (10), (11),
30 (12), (13), (14), (15), (16), and (17), respectively, and a
31 new subsection (2) is added to that section, to read:

1 400.506 Licensure of nurse registries; requirements;
2 penalties.--

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, in
7 accordance with the level 2 standards for screening set forth
8 in chapter 435, of the managing employee, or other similarly
9 titled individual who is responsible for the daily operation
10 of the nurse registry, and of the financial officer, or other
11 similarly titled individual who is responsible for the
12 financial operation of the registry, including billings for
13 patient care and services. The applicant shall comply with
14 the procedures for level 2 background screening as set forth
15 in chapter 435.

16 (b) The agency may require background screening of any
17 other individual who is an applicant if the agency has
18 probable cause to believe that he or she has been convicted of
19 a crime or has committed any other offense prohibited under
20 the level 2 standards 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 the requirements of
26 paragraph (a).

27 (d) A provisional license may be granted to an
28 applicant when each individual required by this section to
29 undergo background screening has met the standards for the
30 abuse registry background check and the Department of Law
31 Enforcement background check but the agency has not yet

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

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

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

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

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

17 (h) The agency may deny or revoke the license if any
18 applicant:

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

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

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

28 Section 46. Subsection (2) of section 400.555, Florida
29 Statutes, is amended to read:

30 400.555 Application for license.--

31 (2) The applicant for licensure must furnish:

1 (a) A description of the physical and mental
2 capabilities and needs of the participants to be served and
3 the availability, frequency, and intensity of basic services
4 and of supportive and optional services to be provided;

5 (b) Satisfactory proof of financial ability to operate
6 and conduct the center in accordance with the requirements of
7 this part, which must include, in the case of an initial
8 application, a 1-year operating plan and proof of a 3-month
9 operating reserve fund; and

10 (c) Proof of adequate liability insurance coverage.

11 (d) Proof of compliance with level 2 background
12 screening as required under s. 400.5572.

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

19 Section 47. Subsection (2) of section 400.556, Florida
20 Statutes, is amended to read:

21 400.556 Denial, suspension, revocation of license;
22 administrative fines; investigations and inspections.--

23 (2) Each of the following actions by the owner of an
24 adult day care center or by its operator or employee is a
25 ground for action by the agency against the owner of the
26 center or its operator or employee:

27 (a) An intentional or negligent act materially
28 affecting the health or safety of center participants.

29 (b) A violation of this part or of any standard or
30 rule under this part.

31

1 (c) A failure of persons subject to level 2 background
2 screening under s. 400.4174(1) to meet the screening standards
3 of s. 435.04, or the retention by the center of an employee
4 subject to level 1 background screening standards under s.
5 400.4174(2) who does not meet the screening standards of s.
6 435.03 and for whom exemptions from disqualification have not
7 been provided by the agency.~~A confirmed report of adult~~
8 ~~abuse, neglect, or exploitation, as defined in s. 415.102, or~~
9 ~~of child abuse or neglect, as defined in s. 415.503, which~~
10 ~~report has been upheld following a hearing held pursuant to~~
11 ~~chapter 120 or a waiver of such hearing.~~

12 (d) Failure to follow the criteria and procedures
13 provided under part I of chapter 394 relating to the
14 transportation, voluntary admission, and involuntary
15 examination of center participants.

16 (e) Multiple or repeated violations of this part or of
17 any standard or rule adopted under this part.

18 (f) Exclusion, permanent suspension, or termination of
19 the owner, if an individual, officer, or board member of the
20 adult day care center, if the owner is a firm, corporation,
21 partnership, or association, or any person owning 5 percent or
22 more of the center, from the Medicare or Medicaid program.

23 Section 48. Subsection (1) of section 400.557, Florida
24 Statutes, is amended to read:

25 400.557 Expiration of license; renewal; conditional
26 license or permit.--

27 (1) A license issued for the operation of an adult day
28 care center, unless sooner suspended or revoked, expires 2
29 years after the date of issuance. The agency shall notify a
30 licensee by certified mail, return receipt requested, at least
31 120 days before the expiration date that license renewal is

1 required to continue operation. At least 90 days prior to the
2 expiration date, an application for renewal must be submitted
3 to the agency. A license shall be renewed, upon the filing of
4 an application on forms furnished by the agency, if the
5 applicant has first met the requirements of this part and of
6 the rules adopted under this part. The applicant must file
7 with the application satisfactory proof of financial ability
8 to operate the center in accordance with the requirements of
9 this part and in accordance with the needs of the participants
10 to be served and an affidavit of compliance with the
11 background screening requirements of s. 400.5572.

12 Section 49. Section 400.5572, Florida Statutes, is
13 created to read:

14 400.5572 Background screening.--

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

19 1. The adult day care center owner if an individual,
20 the operator, and the financial officer.

21 2. An officer or board member if the owner of the
22 adult day care center is a firm, corporation, partnership, or
23 association, or any person owning 5 percent or more of the
24 facility, if the agency has probable cause to believe that
25 such person has been convicted of any offense prohibited by s.
26 435.04. For each officer, board member, or person owning 5
27 percent or more who has been convicted of any such offense,
28 the facility shall submit to the agency a description and
29 explanation of the conviction at the time of license
30 application. This subparagraph does not apply to a board
31 member of a not-for-profit corporation or organization if the

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

10 (b) Proof of compliance with level 2 screening
11 standards which has been submitted within the previous 5 years
12 to meet any facility or professional licensure requirements of
13 the agency or the Department of Health satisfies the
14 requirements of this subsection.

15 (c) The agency may grant a provisional license to an
16 adult day care center applying for an initial license when
17 each individual required by this subsection to undergo
18 screening has completed the abuse registry and Department of
19 Law Enforcement background checks, but has not yet received
20 results from the Federal Bureau of Investigation, or when a
21 request for an exemption from disqualification has been
22 submitted to the agency pursuant to s. 435.07, but a response
23 has not been issued.

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

30 (a) Proof of compliance with level 1 screening
31 requirements obtained to meet any professional license

1 requirements in this state is provided and accompanied, under
2 penalty of perjury, by a copy of the person's current
3 professional license and an affidavit of current compliance
4 with the background screening requirements.

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

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

21 (3) When an employee, volunteer, operator, or owner of
22 an adult day care center is the subject of a confirmed report
23 of adult abuse, neglect, or exploitation, as defined in s.
24 415.102, and the protective investigator knows that the
25 individual is an employee, volunteer, operator, or owner of a
26 center, the agency shall be notified of the confirmed report.

27 Section 50. Section 400.606, Florida Statutes, is
28 amended to read:

29 400.606 License; application; renewal; conditional
30 license or permit; certificate of need.--

31

- 1 (1) A license application must be filed on a form
2 provided by the agency and must be accompanied by the
3 appropriate license fee as well as satisfactory proof that the
4 hospice is in compliance with this part and any rules adopted
5 by the department and proof of financial ability to operate
6 and conduct the hospice in accordance with the requirements of
7 this part. The initial application must be accompanied by a
8 plan for the delivery of home, residential, and homelike
9 inpatient hospice services to terminally ill persons and their
10 families. Such plan must contain, but need not be limited to:
11 (a) The estimated average number of terminally ill
12 persons to be served monthly.
13 (b) The geographic area in which hospice services will
14 be available.
15 (c) A listing of services which are or will be
16 provided, either directly by the applicant or through
17 contractual arrangements with existing providers.
18 (d) Provisions for the implementation of hospice home
19 care within 3 months after licensure.
20 (e) Provisions for the implementation of hospice
21 homelike inpatient care within 12 months after licensure.
22 (f) The number and disciplines of professional staff
23 to be employed.
24 (g) The name and qualifications of any existing or
25 potential contractee.
26 (h) A plan for attracting and training volunteers.
27 (i) The projected annual operating cost of the
28 hospice.
29 (j) A statement of financial resources and personnel
30 available to the applicant to deliver hospice care.
31

1 If the applicant is an existing health care provider, the
2 application must be accompanied by a copy of the most recent
3 profit-loss statement and, if applicable, the most recent
4 licensure inspection report.

5 (2) Each applicant must submit to the agency with its
6 application a description and explanation of any exclusions,
7 permanent suspensions, or terminations from the Medicaid or
8 Medicare programs of the owner, if an individual, of any
9 officer or board member of the hospice, if the owner is a
10 firm, corporation, partnership, or association, or of any
11 person owning 5 percent or more of the hospice. Proof of
12 compliance with disclosure-of-ownership and control-interest
13 requirements of the Medicaid or Medicare programs may be
14 accepted in lieu of this submission.

15 (3)~~(2)~~ A license issued for the operation of a
16 hospice, unless sooner suspended or revoked, shall expire
17 automatically 1 year from the date of issuance. Sixty days
18 prior to the expiration date, a hospice wishing to renew its
19 license shall submit an application for renewal to the agency
20 on forms furnished by the agency. The agency shall renew the
21 license if the applicant has first met the requirements
22 established under this part and all applicable rules and has
23 provided the information described under this section ~~in~~
24 ~~subsection (1)~~ in addition to the application. However, the
25 application for license renewal shall be accompanied by an
26 update of the plan for delivery of hospice care only if
27 information contained in the plan submitted pursuant to
28 subsection (1) is no longer applicable.

29 (4)~~(3)~~ A hospice against which a revocation or
30 suspension proceeding is pending at the time of license
31 renewal may be issued a conditional license by the agency

1 effective until final disposition of such proceeding. If
2 judicial relief is sought from the final agency action, the
3 court having jurisdiction may issue a conditional permit for
4 the duration of the judicial proceeding.

5 ~~(5)(4)~~ The agency shall not issue a license to a
6 hospice that fails to receive a certificate of need under the
7 provisions of ss. 408.031-408.045. A licensed hospice is a
8 health care facility as that term is used in s. 408.039(5) and
9 is entitled to initiate or intervene in an administrative
10 hearing.

11 ~~(6)(5)~~ A freestanding hospice facility that is
12 primarily engaged in providing inpatient and related services
13 and that is not otherwise licensed as a health care facility
14 shall be required to obtain a certificate of need. However, a
15 freestanding hospice facility with six or fewer beds shall not
16 be required to comply with institutional standards such as,
17 but not limited to, standards requiring sprinkler systems,
18 emergency electrical systems, or special lavatory devices.

19 Section 51. Section 400.6065, Florida Statutes, is
20 created to read:

21 400.6065 Background screening.--

22 (1) Upon receipt of a completed application under s.
23 400.606, the agency shall require level 2 background screening
24 on each of the following persons, who shall be considered
25 employees for the purposes of conducting screening under
26 chapter 435:

27 (a) The hospice administrator and financial officer.

28 (b) An officer or board member if the hospice is a
29 firm, corporation, partnership, or association, or any person
30 owning 5 percent or more of the hospice if the agency has
31 probable cause to believe that such officer, board member, or

1 owner has been convicted of any offense prohibited by s.
2 435.04. For each officer, board member, or person owning 5
3 percent or more who has been convicted of any such offense,
4 the hospice shall submit to the agency a description and
5 explanation of the conviction at the time of license
6 application. This paragraph does not apply to a board member
7 of a not-for-profit corporation or organization if the board
8 member serves solely in a voluntary capacity, does not
9 regularly take part in the day-to-day operational decisions of
10 the corporation or organization, receives no remuneration for
11 his or her services, and has no financial interest and has no
12 family members with a financial interest in the corporation or
13 organization, provided that the board member and the
14 corporation or organization submit a statement affirming that
15 the board member's relationship to the corporation or
16 organization satisfies the requirements of this paragraph.

17 (2) Proof of compliance with level 2 screening
18 standards which has been submitted within the previous 5 years
19 to meet any facility or professional licensure requirements of
20 the agency or the Department of Health satisfies the
21 requirements of this section.

22 (3) The agency may grant a provisional license to a
23 hospice applying for an initial license when each individual
24 required by this section to undergo screening has completed
25 the abuse registry and Department of Law Enforcement
26 background checks but has not yet received results from the
27 Federal Bureau of Investigation.

28 Section 52. Present subsections (3), (4), (5), and (6)
29 of section 400.607, Florida Statutes, are redesignated as
30 subsections (4), (5), (6), and (7), respectively, and a new
31 subsection (3) is added to that section, to read:

1 400.607 Denial, suspension, or revocation of license;
2 imposition of administrative fine; grounds; injunctions.--

3 (3) The agency may deny or revoke a license upon a
4 determination that:

5 (a) Persons subject to level 2 background screening
6 under s. 400.6065 do not meet the screening standards of s.
7 435.04, and exemptions from disqualification have not been
8 provided by the agency.

9 (b) An officer, board member, or person owning 5
10 percent or more of the hospice has been excluded, permanently
11 suspended, or terminated from the Medicare or Medicaid
12 programs.

13 Section 53. Section 400.619, Florida Statutes, is
14 amended to read:

15 400.619 Licensure application and renewal
16 requirements.--

17 (1) Each person who intends to be ~~a provider~~ of an
18 adult family-care home provider must obtain a license from the
19 agency ~~before caring for a disabled adult or an aged person in~~
20 ~~the adult family-care home.~~ Such application must be made at
21 least 90 days before the applicant intends to operate the
22 adult family-care home.

23 (2) A person who intends to be ~~a provider~~ of an adult
24 family-care home provider must own or rent and live in the
25 adult family-care home that is to be licensed.

26 (3) Application for a license or annual license
27 renewal ~~to operate an adult family-care home~~ must be made on a
28 form provided by the agency, signed by the provider and
29 notarized, and must be accompanied by a licensing fee of \$100
30 ~~per year to offset the cost of training and education programs~~
31 ~~by the Department of Elderly Affairs for providers.~~

1 (4) Upon receipt of an initial ~~a~~ license application
2 or license renewal application,and the fee, the agency shall
3 initiate level 1 background screening as provided under
4 chapter 435 on ~~must check with the abuse registry and the~~
5 ~~Department of Law Enforcement concerning~~ the adult family-care
6 home provider, each designated relief person applicant, all
7 adult household members, and all staff members. The agency
8 shall also conduct an onsite visit to the home that is to be
9 licensed.

10 (a) Proof of compliance with level 1 screening
11 standards which has been submitted within the previous 5 years
12 to meet any facility or professional licensure requirements of
13 the agency or the Department of Health satisfies the
14 requirements of this subsection. Such proof must be
15 accompanied, under penalty of perjury, by a copy of the
16 person's current professional license and an affidavit of
17 current compliance with the background screening requirements.

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

28 (5) The application must be accompanied by a
29 description and explanation of any exclusions, permanent
30 suspensions, or terminations of the applicant from
31

1 participation in the Medicaid or Medicare programs or any
2 other governmental health care or health insurance program.

3 (6) Unless the adult family-care home is a community
4 residential home subject to chapter 419, the applicant must
5 provide documentation, signed by the appropriate governmental
6 official, that the home has met local zoning requirements for
7 the location for which the license is sought.

8 (7)(5) Access to a licensed adult family-care home
9 must be provided at reasonable times for the appropriate
10 officials of the department, the Department of Health, the
11 Department of Children and Family Services and Rehabilitative
12 Services, the agency, and the State Fire Marshal, who are
13 responsible for the development and maintenance of fire,
14 health, sanitary, and safety standards, to inspect the
15 facility to assure compliance with these standards. In
16 addition, access to a licensed adult family-care home must be
17 provided at reasonable times for the long-term care ombudsman
18 council.

19 (8)(6) A license is effective for 1 year after the
20 date of issuance unless revoked sooner. Each license must
21 state the name of the provider, the address of the home to
22 which the license applies, and the maximum number of residents
23 of the home. A license may be issued with or without
24 restrictions governing the residents or care offered in the
25 adult family-care home.

26 (9)(7) A license is not transferable or applicable to
27 any location or person other than the location and ~~or~~ person
28 indicated on the license application for licensure.

29 (10)(8) The licensed maximum capacity of each adult
30 family-care home is based on the service needs of the
31 residents and the capability of the provider to meet the needs

1 of the residents. Any relative who lives in the adult
2 family-care home and who is an aged person or a disabled adult
3 must be included in that limitation.

4 ~~(11)(9)~~ Each adult family-care home must designate at
5 least one licensed space for a resident receiving optional
6 state supplementation ~~as defined in s. 409.212~~. The
7 Department of Children and Family Health and Rehabilitative
8 Services shall specify by rule the procedures to be followed
9 for referring residents who receive optional state
10 supplementation to adult family-care homes. Those homes
11 licensed as adult foster homes or assisted living facilities
12 prior to January 1, 1994, that convert to adult family-care
13 homes, are exempt from this ~~the~~ requirement of ~~designating one~~
14 ~~space for a resident receiving optional state supplementation.~~

15 ~~(12)(10)~~ The agency may issue a conditional license to
16 a provider for the purpose of bringing the adult family-care
17 home into compliance with licensure requirements. A
18 conditional license must be limited to a specific period, not
19 exceeding 6 months, ~~as determined by the department, in~~
20 ~~consultation with the agency~~. The department shall, by rule,
21 establish criteria for issuing conditional licenses.

22 ~~(11)~~ ~~The agency may deny, suspend, or revoke a license~~
23 ~~for any of the following reasons:~~

24 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
25 ~~abuse, neglect, or exploitation, or conviction of a crime~~
26 ~~related to abuse, neglect, or exploitation.~~

27 ~~(b) A proposed confirmed report that remains unserved~~
28 ~~and is maintained in the central abuse registry and tracking~~
29 ~~system pursuant to s. 415.1065(2)(c).~~

30
31

1 ~~(c) An intentional or negligent act materially~~
2 ~~affecting the health, safety, or welfare of the adult~~
3 ~~family-care home residents.~~

4 ~~(d) A violation of ss. 400.616-400.629 or rules~~
5 ~~adopted under ss. 400.616-400.629, including the failure to~~
6 ~~comply with any restrictions specified in the license.~~

7 ~~(e) Submission of fraudulent or inaccurate information~~
8 ~~to the agency.~~

9 ~~(f) Conviction of a felony involving violence to a~~
10 ~~person.~~

11 ~~(g) Failure to pay a civil penalty assessed under this~~
12 ~~part.~~

13 (13)(12) All moneys collected under this section must
14 be deposited into the Department of Elderly Affairs
15 Administrative Trust Fund and ~~must be~~ used to offset the
16 expenses of departmental training and education for adult
17 family-care home providers.

18 (14)(13) The department may shall adopt rules to
19 establish procedures, identify forms, specify documentation,
20 and clarify licensure requirements, as necessary to administer
21 implement this section.

22 Section 54. Section 400.6194, Florida Statutes, is
23 created to read:

24 400.6194 Denial, revocation, or suspension of a
25 license.--The agency may deny, suspend, or revoke a license
26 for any of the following reasons:

27 (1) Failure of any of the persons required to undergo
28 background screening under s. 400.619 to meet the level 1
29 screening standards of s. 435.03, unless an exemption from
30 disqualification has been provided by the agency.

31

1 (2) An intentional or negligent act materially
2 affecting the health, safety, or welfare of the adult
3 family-care home residents.

4 (3) Failure to comply with any restrictions specified
5 in the license.

6 (4) Submission of fraudulent information or omission
7 of any material fact on a license application or any other
8 document required by the agency.

9 (5) Failure to pay an administrative fine assessed
10 under this part.

11 (6) A violation of this part or adopted rules which
12 results in conditions or practices that directly threaten the
13 physical or emotional health, safety, or welfare of residents.

14 (7) Failure to correct cited fire code violations that
15 threaten the health, safety, or welfare of residents.

16 (8) Failure to submit a completed initial license
17 application or to complete an application for license renewal
18 within the specified timeframes.

19 (9) Exclusion, permanent suspension, or termination of
20 the provider from the Medicare or Medicaid program.

21 Section 55. Section 400.801, Florida Statutes, is
22 amended to read:

23 400.801 Homes for special services.--

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

25 (a) "Agency" means the "Agency for Health Care
26 Administration."

27 (b) "Home for special services" means a site where
28 specialized health care services are provided, including
29 personal and custodial care, but not continuous nursing
30 services.

31

1 (2) A person must obtain a license from the agency to
2 operate a home for special services. A license is valid for 1
3 year.

4 (3) The application for a license under this section
5 must be made on a form provided by the agency. A
6 nonrefundable license fee of not more than \$1,000 must be
7 submitted with the license application.

8 (4) Each applicant for licensure must comply with the
9 following requirements:

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

22 (b) The agency may require background screening of any
23 other individual who is an applicant if the agency has
24 probable cause to believe that he or she has been convicted of
25 a crime or has committed any other offense prohibited under
26 the level 2 standards for screening set forth in chapter 435.

27 (c) Proof of compliance with the level 2 background
28 screening requirements of chapter 435 which has been submitted
29 within the previous 5 years in compliance with any other
30 health care or assisted living licensure requirements of this
31

1 state is acceptable in fulfillment of the requirements of
2 paragraph (a).

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

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

31

1 interests under the Medicaid or Medicare programs may be
2 accepted in lieu of 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 does 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) A license may not be granted to an applicant if
22 the applicant or managing employee has been found guilty of,
23 regardless of adjudication, or has entered a plea of nolo
24 contendere or guilty to, any offense prohibited under the
25 level 2 standards for screening set forth in chapter 435,
26 unless an exemption from disqualification has been granted by
27 the agency as set forth in chapter 435.

28 (h) The agency may deny or revoke licensure if the
29 applicant:

30 1. Has falsely represented a material fact in the
31 application required by paragraph (e) or paragraph (f), or has

1 omitted any material fact from the application required by
2 paragraph (e) or paragraph (f); or

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

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

8 (5)~~(4)~~ Application for license renewal must be
9 submitted 90 days before the expiration of the license.

10 (6)~~(5)~~ A change of ownership or control of a home for
11 special services must be reported to the agency in writing at
12 least 60 days before the change is scheduled to take effect.

13 (7)~~(6)~~ The agency shall adopt rules for implementing
14 and enforcing this section.

15 (8)~~(7)~~(a) It is unlawful for any person to establish,
16 conduct, manage, or operate a home for special services
17 without obtaining a license from the agency.

18 (b) It is unlawful for any person to offer or
19 advertise to the public, in any medium whatever, specialized
20 health care services without obtaining a license from the
21 agency.

22 (c) It is unlawful for a holder of a license issued
23 under this section to advertise or represent to the public
24 that it holds a license for a type of facility other than the
25 facility for which its license is issued.

26 (9)~~(8)~~(a) A violation of any provision of this section
27 or rules adopted by the agency for implementing this section
28 is punishable by payment of an administrative fine not to
29 exceed \$5,000.

30 (b) A violation of subsection(8)~~(7)~~or rules adopted
31 under that subsection is a misdemeanor of the first degree,

1 punishable as provided in s. 775.082 or s. 775.083. Each day
2 of continuing violation is a separate offense.

3 Section 56. Present subsections (4), (5), and (6) of
4 section 400.805, Florida Statutes, are redesignated as
5 subsections (5), (6), and (7), respectively, present
6 subsections (3) and (7) of that section are redesignated as
7 subsections (4) and (8), respectively, and amended, and a new
8 subsection (3) is added to that section, to read:

9 400.805 Transitional living facilities.--

10 (3) Each applicant for licensure must comply with the
11 following requirements:

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

23 (b) The agency may require background screening of any
24 other individual who is an applicant if the agency has
25 probable cause to believe that he or she has been convicted of
26 a crime or has committed any other offense prohibited under
27 the level 2 standards for screening set forth in chapter 435.

28 (c) Proof of compliance with the level 2 background
29 screening requirements of chapter 435 which has been submitted
30 within the previous 5 years in compliance with any other
31 health care or assisted living licensure requirements of this

1 state is acceptable in fulfillment of the requirements of
2 paragraph (a).

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

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

31

1 interests under the Medicaid or Medicare programs may be
2 accepted in lieu of 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 does 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) A license may not be granted to an applicant if
22 the applicant or managing employee has been found guilty of,
23 regardless of adjudication, or has entered a plea of nolo
24 contendere or guilty to, any offense prohibited under the
25 level 2 standards for screening set forth in chapter 435,
26 unless an exemption from disqualification has been granted by
27 the agency as set forth in chapter 435.

28 (h) The agency may deny or revoke licensure if the
29 applicant:

30 1. Has falsely represented a material fact in the
31 application required by paragraph (e) or paragraph (f), or has

1 omitted any material fact from the application required by
2 paragraph (e) or paragraph (f); or

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

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

8 (4)(3) An application for renewal of license must be
9 submitted 90 days before the expiration of the license. Upon
10 renewal of licensure, each applicant must submit to the
11 agency, under penalty of perjury, an affidavit as set forth in
12 s. 400.805(3)(d).

13 (8)(7)(a) A violation of any provision of this section
14 or rules adopted by the agency or division under this section
15 is punishable by payment of an administrative or a civil
16 penalty fine not to exceed \$5,000.

17 (b) A violation of subsection(7)(6)or rules adopted
18 under that subsection is a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083. Each day
20 of a continuing violation is a separate offense.

21 Section 57. Subsection (2) of section 430.04, Florida
22 Statutes, is amended to read:

23 430.04 Duties and responsibilities of the Department
24 of Elderly Affairs.--The Department of Elderly Affairs shall:

25 (2) Be responsible for ensuring that each area agency
26 on aging operates in a manner to ensure that the elderly of
27 this state receive the best services possible. The department
28 shall rescind designation of an area agency on aging or take
29 intermediate measures against the agency, including corrective
30 action, unannounced special monitoring, temporary assumption
31 of operation of one or more programs by the department,

1 placement on probationary status, imposing a moratorium on
2 agency action, imposing financial penalties for
3 nonperformance, or other administrative action pursuant to
4 chapter 120, if the department finds that:

5 (a) An intentional or negligent act of the agency has
6 materially affected the health, welfare, or safety of clients,
7 or substantially and negatively affected the operation of an
8 aging services program.

9 (b) The agency lacks financial stability sufficient to
10 meet contractual obligations or that contractual funds have
11 been misappropriated.

12 (c) The agency has committed multiple or repeated
13 violations of legal and regulatory requirements or department
14 standards.

15 (d) The agency has failed to continue the provision or
16 expansion of services after the declaration of a state of
17 emergency.

18 (e) The agency has failed to adhere to the terms of
19 its contract with the department.

20 (f) The agency has failed to implement and maintain a
21 department-approved client grievance resolution procedure.

22 Section 58. 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 59. 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(14)~~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 60. 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 managing director or other similarly
13 titled individual who is responsible for the daily operation
14 of the laboratory and of the financial officer, or other
15 similarly titled individual who is responsible for the
16 financial operation of the laboratory, including billings for
17 patient services. The applicant must comply with the
18 procedures for level 2 background screening as set forth in
19 chapter 435, as well as the requirements of s. 435.03(3).

20 (b) The agency may require background screening of any
21 other individual who is an applicant if the agency has
22 probable cause to believe that he or she has been convicted of
23 a crime or has committed any other offense prohibited under
24 the level 2 standards for screening set forth in chapter 435.

25 (c) 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 the requirements of paragraph (a).

30 (d) 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 license
8 may be granted to the applicant upon the agency's receipt of a
9 report of the results of the Federal Bureau of Investigation
10 background screening for each individual required by this
11 section to undergo background screening which confirms that
12 all standards have been met, or upon the granting of a
13 disqualification exemption by the agency as set forth in
14 chapter 435. Any other person who is required to undergo level
15 2 background screening may serve in his or her capacity
16 pending the agency's receipt of the report from the Federal
17 Bureau of Investigation. However, the person may not continue
18 to serve if the report indicates any violation of background
19 screening standards and a disqualification exemption has not
20 been requested of and granted by the agency as set forth in
21 chapter 435.

22 (e) 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 the requirements for disclosure of ownership and control
27 interests under the Medicaid or Medicare programs may be
28 accepted in lieu of this submission.

29 (f) 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 does 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 paragraph.

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

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

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

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 61. 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 62. 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, as well as the requirements of s. 435.03(3).

27 (b) The agency may require background screening of any
28 other individual who is an applicant if the agency has
29 probable cause to believe that he or she has been convicted of
30 a crime or has committed any other offense prohibited under
31 the level 2 standards for screening set forth 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 license 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 license
15 may be granted to the applicant upon the agency's receipt of a
16 report of the results of the Federal Bureau of Investigation
17 background screening for each individual required by this
18 section to undergo background screening which confirms that
19 all standards have been met, or upon the granting of a
20 disqualification exemption by the agency as set forth in
21 chapter 435. Any other person who is required to undergo level
22 2 background screening may serve in his or her capacity
23 pending the agency's receipt of the report from the Federal
24 Bureau of Investigation. However, the person may not continue
25 to serve if the report indicates any violation of background
26 screening standards and a disqualification exemption has not
27 been requested of and granted by the agency as set forth in
28 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 may 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 license may not be granted to an applicant if
24 the applicant or managing employee has been found guilty of,
25 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 licensure if the
31 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 license renewal must contain
9 the information required under paragraphs (e) and (f).

10 Section 63. Section 455.661, Florida Statutes, is
11 repealed.

12 Section 64. Three 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, section 400.5572,
16 Florida Statutes, and chapter 435, Florida Statutes, and
17 \$166,430 is appropriated from the Health Care Trust Fund for
18 that purpose.

19 Section 65. 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 66. (1) The provisions of this act which
26 require an applicant for licensure, certification, or
27 registration to undergo background screening shall stand
28 repealed on June 30, 2001, unless reviewed and saved from
29 repeal through reenactment by this legislature.

30 (2) The Agency for Health Care Administration shall
31 conduct a review of the effectiveness of licensure,

1 certification, and registration applicant background screening
2 requirements in preventing persons with specified criminal
3 backgrounds from operating health care programs, and in
4 preventing or deterring health care fraud and abuse. The
5 Agency for Health Care Administration shall convene a
6 workgroup to direct this review, and the workgroup shall, at a
7 minimum, include a representative from the following parties:

8 (a) The Statewide Prosecutor's Office;

9 (b) The Attorney General's Office;

10 (c) The Department of Children and Families; and

11 (d) The Department of Elder Affairs.

12 (3) Such review by the Agency for Health Care
13 Administration shall be completed and a report submitted to
14 the legislature by January 1, 2001.

15 Section 67. This act shall take effect July 1, 1998.

16
17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 CS for SB 714

20 Deletes several sections of this bill, thereby leaving the
21 existing law unchanged regarding home health agencies; nurse
22 registries; sitters, companions, and home makers. Inserts
23 language that requires background screening of applicants for
24 licensure to operate home health agencies and nurse
25 registries. Provides for the review of certain background
26 screening requirements. Authorizes three full-time positions
27 and funds to the Agency for Health Care Administration to
28 implement the background screening provisions. Authorizes
29 positions and funding for the Florida Department of Law
30 Enforcement to handle increased workload of criminal history
31 records check authorized by this bill.