

1
2 An act relating to health care; amending s.
3 381.0035, F.S.; requiring certain information
4 related to HIV testing and counseling to be
5 included in HIV educational courses; amending
6 s. 381.004, F.S.; requiring informed consent
7 before an HIV test may be ordered; requiring
8 certain information to be provided when
9 informed consent is sought; providing
10 requirements with respect to notification and
11 release of test results; authorizing certain
12 disclosures of test results; providing for
13 court orders for testing in specified
14 circumstances; providing for emergency action
15 against a registration; providing requirements
16 for model protocols; providing penalties;
17 amending s. 384.25, F.S.; deleting provisions
18 relating to protocols and to notification to
19 school superintendents; amending s. 455.604,
20 F.S.; requiring certain information related to
21 HIV testing to be included in HIV educational
22 courses for certain licensed professions;
23 amending s. 112.0455, F.S., relating to the
24 Drug-Free Workplace Act; requiring background
25 screening for an applicant for licensure of
26 certain laboratories; authorizing the use of
27 certain body hair for drug testing; creating s.
28 381.60225, F.S.; requiring background screening
29 for an applicant for certification to operate
30 an organ procurement organization, a tissue
31 bank, or an eye bank; amending s. 383.302,

1 F.S., relating to the regulation of birth
2 centers; revising definitions to reflect the
3 transfer of regulatory authority from the
4 Department of Health and Rehabilitative
5 Services to the Agency for Health Care
6 Administration; amending s. 383.305, F.S.;
7 requiring background screening for an applicant
8 for licensure of a birth center; amending ss.
9 383.308, 383.309, 383.31, 383.312, 383.313,
10 383.318, 383.32, 383.324, 383.325, 383.327,
11 383.33, 383.331, F.S., relating to the
12 regulation of birth centers; conforming
13 provisions to reflect the transfer of
14 regulatory authority to the Agency for Health
15 Care Administration; amending s. 390.015, F.S.;
16 requiring background screening for an applicant
17 for licensure of an abortion clinic; amending
18 s. 391.206, F.S.; requiring background
19 screening for an applicant for licensure to
20 operate a pediatric extended care center;
21 amending s. 393.063, F.S., relating to
22 developmental disabilities; providing a
23 definition; amending s. 393.067, F.S.;
24 requiring background screening for an applicant
25 for licensure to operate an intermediate care
26 facility for the developmentally disabled;
27 amending s. 394.4787, F.S., relating to the
28 regulation of mental health facilities;
29 conforming a cross-reference to changes made by
30 the act; amending s. 394.67, F.S., relating to
31 community alcohol, drug abuse, and mental

1 health services; revising definitions; amending
2 s. 394.875, F.S.; requiring background
3 screening for an applicant for licensure of a
4 crisis stabilization unit or residential
5 treatment facility; amending ss. 394.876,
6 394.877, 394.878, 394.879, 394.90, 394.902,
7 394.903, 394.904, 394.907, F.S., relating to
8 the regulation of mental health facilities;
9 conforming provisions to reflect the transfer
10 of regulatory authority to the Agency for
11 Health Care Administration; amending s.
12 395.002, F.S., relating to hospital licensing
13 and regulation; providing definitions; creating
14 s. 395.0055, F.S.; requiring background
15 screening for an applicant for licensure of a
16 facility operated under ch. 395, F.S.; amending
17 s. 395.0199, F.S.; requiring background
18 screening for an applicant for registration as
19 a utilization review agent; amending s.
20 400.051, F.S.; conforming a cross-reference;
21 amending s. 400.071, F.S.; requiring background
22 screening for an applicant for licensure of a
23 nursing home; amending s. 400.411, F.S.;
24 requiring background screening for an applicant
25 for licensure of an assisted living facility;
26 amending ss. 400.414, 400.417, 400.4174,
27 400.4176, F.S., relating to the regulation of
28 assisted living facilities; providing
29 additional grounds for denial, revocation, or
30 suspension of a license; requiring background
31 screening for employees hired on or after a

1 specified date; amending ss. 400.461, F.S.,
2 relating to the regulation of home health
3 agencies; conforming a cross-reference;
4 amending s. 400.471, F.S.; requiring background
5 screening for an applicant for licensure of a
6 home health agency; amending s. 400.506, F.S.;
7 requiring background screening for an applicant
8 for licensure of a nurse registry; amending s.
9 400.555, F.S.; requiring background screening
10 for an applicant for licensure of an adult day
11 care center; amending s. 400.556, F.S.,
12 relating to disciplinary actions against adult
13 day care center licensees; making noncompliance
14 with background screening requirements a basis
15 for disciplinary action; amending s. 400.557,
16 F.S., relating to renewal of an adult day care
17 center license; requiring an affidavit of
18 compliance with background screening
19 requirements when a license is renewed;
20 creating s. 400.5572, F.S.; requiring
21 background screening for employees of an adult
22 day care center hired on or after a specified
23 date; amending s. 400.606, F.S.; requiring
24 background screening for an applicant for
25 licensure of a hospice; creating s. 400.6065,
26 F.S.; providing requirements for background
27 screening of hospice employees; amending s.
28 400.607, F.S., relating to disciplinary actions
29 against a hospice license; making noncompliance
30 with background screening requirements a basis
31 for disciplinary action; amending s. 400.619,

1 F.S.; revising background screening
2 requirements for an applicant for licensure of
3 an adult family care home; providing screening
4 requirements for designated relief persons;
5 deleting agency authority to take disciplinary
6 action against an adult family-care-home
7 license; revising rulemaking authority;
8 creating s. 400.6194, F.S.; providing for
9 disciplinary action against an adult
10 family-care-home license; making noncompliance
11 with screening requirements a basis for
12 disciplinary action; amending s. 400.801, F.S.;
13 requiring background screening for an applicant
14 for licensure of a home for special services;
15 amending s. 400.805, F.S.; requiring background
16 screening for an applicant for licensure of a
17 transitional living facility; amending s.
18 430.04, F.S.; providing duties and
19 responsibilities of the Department of Elderly
20 Affairs; requiring the department to take
21 disciplinary action against an area agency on
22 aging for failure to implement and maintain a
23 department-approved grievance resolution
24 procedure; amending s. 455.654, F.S., relating
25 to referring health care providers; conforming
26 cross-references to changes made by the act;
27 amending s. 468.505, F.S., relating to
28 disciplinary action against certain medical
29 professionals and activities exempt from
30 regulation; updating provisions and conforming
31 cross-references; amending s. 483.101, F.S.;

1 requiring background screening for an applicant
2 for licensure of a clinical laboratory;
3 amending s. 483.106, F.S., relating to a
4 certificate of exemption; correcting
5 terminology; amending s. 483.30, F.S.;
6 requiring background screening for an applicant
7 for licensure of a multiphasic health testing
8 center; repealing s. 455.661, F.S., which
9 provides for licensure of designated health
10 care services; providing appropriations and
11 authorizing positions; authorizing certain
12 positions in excess of those otherwise
13 authorized; providing funding; providing for
14 applicability of background screening
15 requirements; providing for future repeal;
16 providing for a review of certain background
17 screening requirements; providing an effective
18 date.

19

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

21

22 Section 1. Subsection (1) of section 381.0035, Florida
23 Statutes, is amended to read:24 381.0035 Educational course on human immunodeficiency
25 virus and acquired immune deficiency syndrome; employees and
26 clients of certain health care facilities.--27 (1) The Department of Health shall require all
28 employees and clients of facilities licensed under chapters
29 393, 394, and 397 and employees of facilities licensed under
30 chapter 395 and parts II, III, IV, and VI of chapter 400 to
31 complete, biennially, a continuing educational course on the

1 modes of transmission, infection control procedures, clinical
2 management, and prevention of human immunodeficiency virus and
3 acquired immune deficiency syndrome with an emphasis on
4 appropriate behavior and attitude change. Such instruction
5 shall include information on current Florida law and its
6 impact on testing, confidentiality of test results, and
7 treatment of patients and any protocols and procedures
8 applicable to human immunodeficiency counseling and testing,
9 reporting, the offering of HIV testing to pregnant women, and
10 partner notification issues pursuant to ss. 381.004 and
11 384.25.

12 Section 2. Subsections (2), (3), (4), (5), and (8) of
13 section 381.004, Florida Statutes, are amended, and subsection
14 (6) of that section is reenacted, to read:

15 381.004 Testing for human immunodeficiency virus.--

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

17 (a) "HIV test" means a test ordered after July 6,
18 1988, to determine the presence of the antibody or antigen to
19 human immunodeficiency virus or the presence of human
20 immunodeficiency virus infection.

21 (b) "HIV test result" means a laboratory report of a
22 human immunodeficiency virus test result entered into a
23 medical record on or after July 6, 1988, or any report or
24 notation in a medical record of a laboratory report of a human
25 immunodeficiency virus test. As used in this section, the
26 term "HIV test result" does not include test results reported
27 to a health care provider by a patient.

28 (c) "Significant exposure" means:

29 1. Exposure to blood or body fluids through
30 needlestick, instruments, or sharps;

31

1 2. Exposure of mucous membranes to visible blood or
2 body fluids, to which universal precautions apply according to
3 the National Centers for Disease Control and Prevention,
4 including, without limitations, the following body fluids:

- 5 a. Blood.
6 b. Semen.
7 c. Vaginal secretions.
8 d. Cerebro-spinal fluid (CSF).
9 e. Synovial fluid.
10 f. Pleural fluid.
11 g. Peritoneal fluid.
12 h. Pericardial fluid.
13 i. Amniotic fluid.
14 j. Laboratory specimens that contain HIV (e.g.,
15 suspensions of concentrated virus); or

16 3. Exposure of skin to visible blood or body fluids,
17 especially when the exposed skin is chapped, abraded, or
18 afflicted with dermatitis or the contact is prolonged or
19 involving an extensive area.

20 (d) "Preliminary HIV test" means an antibody screening
21 test, such as the enzyme-linked immunosorbent assays (ELISAs)
22 or the Single-Use Diagnostic System (SUDS).

23 (e)~~(d)~~ "Test subject" or "subject of the test" means
24 the person upon whom an HIV test is performed, or the person
25 who has legal authority to make health care decisions for the
26 test subject.

27 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
28 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

29 (a) No person in this state shall order ~~perform~~ a test
30 designed to identify the human immunodeficiency virus, or its
31 antigen or antibody, without first obtaining the informed

1 consent of the person upon whom the test is being performed,
2 except as specified in paragraph (i). Informed consent shall
3 be preceded by an explanation of the right to confidential
4 treatment of information identifying the subject of the test
5 and the results of the test to the extent provided by law.
6 Information shall also be provided on the fact that a positive
7 HIV test result will be reported to the county health
8 department with sufficient information to identify the test
9 subject and on the availability and location of sites at which
10 anonymous testing is performed. As required in paragraph
11 (4)(c), each county health department shall maintain a list of
12 sites at which anonymous testing is performed, including the
13 locations, phone numbers, and hours of operation of the sites.
14 Consent need not be in writing provided there is documentation
15 in the medical record that the test has been explained and the
16 consent has been obtained.

17 (b) Except as provided in paragraph (i), informed
18 consent must be obtained from a legal guardian or other person
19 authorized by law when the person:

20 1. Is not competent, is incapacitated, or is otherwise
21 unable to make an informed judgment; or

22 2. Has not reached the age of majority, except as
23 provided in s. 384.30.

24 (c) The person ordering the test or that person's
25 designee shall ensure that all reasonable efforts are made to
26 notify the test subject of his or her test result.
27 Notification of a person with a positive test result shall
28 include information on the availability of appropriate medical
29 and support services, on the importance of notifying partners
30 who may have been exposed, and on preventing transmission of
31 HIV. Notification of a person with a negative test result

1 shall include, as appropriate, information on preventing the
2 transmission of HIV. When testing occurs in a hospital
3 emergency department, detention facility, or other facility
4 and the test subject has been released before being notified
5 of positive test results, informing the county health
6 department for that department to notify the test subject
7 fulfills this responsibility.~~No person shall order a test~~
8 ~~without making available to the person tested, prior to the~~
9 ~~test, information regarding measures for the prevention of,~~
10 ~~exposure to, and transmission of human immunodeficiency virus.~~
11 ~~At the time an HIV test is ordered, the person ordering the~~
12 ~~test shall schedule a return visit with the test subject for~~
13 ~~the purpose of disclosing the test results and conducting~~
14 ~~posttest counseling as described in paragraph (e).~~

15 (d) No test result shall be determined as positive,
16 and no positive test result shall be revealed to any person,
17 without corroborating or confirmatory tests being conducted
18 except in the following situations:-

19 1. However, Preliminary test results may be released
20 to licensed physicians or the medical or nonmedical personnel
21 subject to the significant exposure for purposes of
22 subparagraphs (h)10., (i)10. and 11., and 12.

23 2. Preliminary test results may be released to health
24 care providers and to the person tested when decisions about
25 medical care or treatment of the person tested cannot await
26 the results of confirmatory testing. Positive preliminary HIV
27 test results shall not be characterized to the patient as a
28 diagnosis of HIV infection. Justification for the use of
29 preliminary test results must be documented in the medical
30 record by the health care provider who ordered the test. This
31 subparagraph does not authorize the release of preliminary

1 test results for the purpose of routine identification of
2 HIV-infected individuals or when HIV testing is incidental to
3 the preliminary diagnosis or care of a patient. Corroborating
4 or confirmatory testing must be conducted as followup to a
5 positive preliminary test. Results shall be communicated to
6 the patient according to statute regardless of the outcome.

7 Except as provided in this section, test results are
8 confidential and exempt from the provisions of s. 119.07(1).

9 ~~(e) Except as otherwise provided, no test result shall~~
10 ~~be revealed to the person upon whom the test was performed~~
11 ~~without affording that person the immediate opportunity for~~
12 ~~individual, face-to-face counseling about:~~

- 13 ~~1. The meaning of the test results;~~
- 14 ~~2. The possible need for additional testing;~~
- 15 ~~3. Measures for the prevention of the transmission of~~
16 ~~the human immunodeficiency virus infection;~~
- 17 ~~4. The availability in the geographic area of any~~
18 ~~appropriate health care services, including mental health~~
19 ~~care, and appropriate social and support services;~~
- 20 ~~5. The benefits of locating and counseling any~~
21 ~~individual by whom the infected individual may have been~~
22 ~~exposed to the human immunodeficiency virus infection and any~~
23 ~~individual whom the infected individual may have exposed to~~
24 ~~such human immunodeficiency virus infection; and~~
- 25 ~~6. The availability, if any, of the services of public~~
26 ~~health authorities with respect to locating and counseling any~~
27 ~~individual described in subparagraph 5.~~

28
29 ~~Telephonic posttest counseling shall be permitted when~~
30 ~~reporting the HIV test results of a home access HIV test that~~
31 ~~is approved by the United States Food and Drug Administration~~

1 ~~and analyzed by a laboratory certified under the federal~~
2 ~~Clinical Laboratory Improvement Amendments of 1988 or licensed~~
3 ~~under part I of chapter 483.~~

4 (e)~~(f)~~ Except as provided in this section, the
5 identity of any person upon whom a test has been performed and
6 test results are confidential and exempt from the provisions
7 of s. 119.07(1). No person who has obtained or has knowledge
8 of a test result pursuant to this section may disclose or be
9 compelled to disclose the identity of any person upon whom a
10 test is performed, or the results of such a test in a manner
11 which permits identification of the subject of the test,
12 except to the following persons:

13 1. The subject of the test or the subject's legally
14 authorized representative.

15 2. Any person, including third-party payors,
16 designated in a legally effective release of the test results
17 executed prior to or after the test by the subject of the test
18 or the subject's legally authorized representative. The test
19 subject may in writing authorize the disclosure of the test
20 subject's HIV test results to third party payors, who need not
21 be specifically identified, and to other persons to whom the
22 test subject subsequently issues a general release of medical
23 information. A general release without such prior written
24 authorization is not sufficient to release HIV test results.

25 3. An authorized agent or employee of a health
26 facility or health care provider if the health facility or
27 health care provider itself is authorized to obtain the test
28 results, the agent or employee participates in the
29 administration or provision of patient care or handles or
30 processes specimens of body fluids or tissues, and the agent
31 or employee has a need to know such information. The

1 department shall adopt a rule defining which persons have a
2 need to know pursuant to this subparagraph.

3 4. Health care providers consulting between themselves
4 or with health care facilities to determine diagnosis and
5 treatment. For purposes of this subparagraph, health care
6 providers shall include licensed health care professionals
7 employed by or associated with state, county, or municipal
8 detention facilities when such health care professionals are
9 acting exclusively for the purpose of providing diagnoses or
10 treatment of persons in the custody of such facilities.

11 5. The department, in accordance with rules for
12 reporting and controlling the spread of disease, as otherwise
13 provided by state law.

14 6. A health facility or health care provider which
15 procures, processes, distributes, or uses:

16 a. A human body part from a deceased person, with
17 respect to medical information regarding that person; or

18 b. Semen provided prior to July 6, 1988, for the
19 purpose of artificial insemination.

20 7. Health facility staff committees, for the purposes
21 of conducting program monitoring, program evaluation, or
22 service reviews pursuant to chapters 395 and 766.

23 8. Authorized medical or epidemiological researchers
24 who may not further disclose any identifying characteristics
25 or information.

26 9. A person allowed access by a court order which is
27 issued in compliance with the following provisions:

28 a. No court of this state shall issue such order
29 unless the court finds that the person seeking the test
30 results has demonstrated a compelling need for the test
31 results which cannot be accommodated by other means. In

1 assessing compelling need, the court shall weigh the need for
2 disclosure against the privacy interest of the test subject
3 and the public interest which may be disserved by disclosure
4 which deters blood, organ, and semen donation and future human
5 immunodeficiency virus-related testing or which may lead to
6 discrimination. This paragraph shall not apply to blood bank
7 donor records.

8 b. Pleadings pertaining to disclosure of test results
9 shall substitute a pseudonym for the true name of the subject
10 of the test. The disclosure to the parties of the subject's
11 true name shall be communicated confidentially in documents
12 not filed with the court.

13 c. Before granting any such order, the court shall
14 provide the individual whose test result is in question with
15 notice and a reasonable opportunity to participate in the
16 proceedings if he or she is not already a party.

17 d. Court proceedings as to disclosure of test results
18 shall be conducted in camera, unless the subject of the test
19 agrees to a hearing in open court or unless the court
20 determines that a public hearing is necessary to the public
21 interest and the proper administration of justice.

22 e. Upon the issuance of an order to disclose test
23 results, the court shall impose appropriate safeguards against
24 unauthorized disclosure which shall specify the persons who
25 may have access to the information, the purposes for which the
26 information shall be used, and appropriate prohibitions on
27 future disclosure.

28 10. A person allowed access by order of a judge of
29 compensation claims of the Division of Workers' Compensation
30 of the Department of Labor and Employment Security. A judge
31 of compensation claims shall not issue such order unless he or

1 she finds that the person seeking the test results has
2 demonstrated a compelling need for the test results which
3 cannot be accommodated by other means.

4 11. Those employees of the department or of
5 child-placing or child-caring agencies or of family foster
6 homes, licensed pursuant to s. 409.175, who are directly
7 involved in the placement, care, control, or custody of such
8 test subject and who have a need to know such information;
9 adoptive parents of such test subject; or any adult custodian,
10 any adult relative, or any person responsible for the child's
11 welfare, if the test subject was not tested under subparagraph
12 (b)2. and if a reasonable attempt has been made to locate and
13 inform the legal guardian of a test result. The department
14 shall adopt a rule to implement this subparagraph.

15 12. Those employees of residential facilities or of
16 community-based care programs that care for developmentally
17 disabled persons, pursuant to chapter 393, who are directly
18 involved in the care, control, or custody of such test subject
19 and who have a need to know such information.

20 13. A health care provider involved in the delivery of
21 a child can note the mother's HIV test results in the child's
22 medical record.

23 ~~14.12.~~ Medical personnel or nonmedical personnel who
24 have been subject to a significant exposure during the course
25 of medical practice or in the performance of professional
26 duties, or individuals who are the subject of the significant
27 exposure as provided in subparagraphs ~~(h)10., (i)10. and 11.,~~
28 and 13.

29 15. The medical examiner shall disclose positive HIV
30 test results to the department in accordance with rules for
31 reporting and controlling the spread of disease.

1 ~~(f)~~(g) Except as provided in this section, the
2 identity of a person upon whom a test has been performed is
3 confidential and exempt from the provisions of s. 119.07(1).
4 No person to whom the results of a test have been disclosed
5 may disclose the test results to another person except as
6 authorized by this subsection and by ss. 951.27 and 960.003.
7 Whenever disclosure is made pursuant to this subsection, it
8 shall be accompanied by a statement in writing which includes
9 the following or substantially similar language: "This
10 information has been disclosed to you from records whose
11 confidentiality is protected by state law. State law
12 prohibits you from making any further disclosure of such
13 information without the specific written consent of the person
14 to whom such information pertains, or as otherwise permitted
15 by state law. A general authorization for the release of
16 medical or other information is NOT sufficient for this
17 purpose." An oral disclosure shall be accompanied by oral
18 notice and followed by a written notice within 10 days, except
19 that this notice shall not be required for disclosures made
20 pursuant to subparagraphs~~(e)3.~~(f)3. and 4.

21 ~~(g)~~(h) Human immunodeficiency virus test results
22 contained in the medical records of a hospital licensed under
23 chapter 395 may be released in accordance with s. 395.3025
24 without being subject to the requirements of subparagraph
25 ~~(e)2.~~(f)2., subparagraph~~(e)9.~~(f)9., or paragraph~~(f)~~(g);
26 provided the hospital has obtained written informed consent
27 for the HIV test in accordance with provisions of this
28 section.

29 ~~(h)~~(i) Notwithstanding the provisions of paragraph
30 (a), informed consent is not required:

31

- 1 1. When testing for sexually transmissible diseases is
2 required by state or federal law, or by rule including the
3 following situations:
- 4 a. HIV testing pursuant to s. 796.08 of persons
5 convicted of prostitution or of procuring another to commit
6 prostitution.
- 7 b. Testing for HIV by a medical examiner in accordance
8 with s. 406.11.
- 9 2. Those exceptions provided for blood, plasma,
10 organs, skin, semen, or other human tissue pursuant to s.
11 381.0041.
- 12 3. For the performance of an HIV-related test by
13 licensed medical personnel in bona fide medical emergencies
14 when the test results are necessary for medical diagnostic
15 purposes to provide appropriate emergency care or treatment to
16 the person being tested and the patient is unable to consent,
17 as supported by documentation in the medical record.
18 Notification of test results in accordance with paragraph (c)
19 ~~Posttest counseling~~ is required.
- 20 4. For the performance of an HIV-related test by
21 licensed medical personnel for medical diagnosis of acute
22 illness where, in the opinion of the attending physician,
23 obtaining informed consent would be detrimental to the
24 patient, as supported by documentation in the medical record,
25 and the test results are necessary for medical diagnostic
26 purposes to provide appropriate care or treatment to the
27 person being tested. Notification of test results in
28 accordance with paragraph (c)~~Posttest counseling~~ is required
29 if it would not be detrimental to the patient. This
30 subparagraph does not authorize the routine testing of
31 patients for HIV infection without informed consent.

1 5. When HIV testing is performed as part of an autopsy
2 for which consent was obtained pursuant to s. 872.04.

3 6. For the performance of an HIV test upon a defendant
4 pursuant to the victim's request in a prosecution for any type
5 of sexual battery where a blood sample is taken from the
6 defendant voluntarily, pursuant to court order for any
7 purpose, or pursuant to the provisions of s. 775.0877, s.
8 951.27, or s. 960.003; however, the results of any HIV test
9 performed shall be disclosed solely to the victim and the
10 defendant, except as provided in ss. 775.0877, 951.27, and
11 960.003.

12 7. When an HIV test is mandated by court order.

13 8. For epidemiological research pursuant to s.
14 381.0032, for research consistent with institutional review
15 boards created by 45 C.F.R. part 46, or for the performance of
16 an HIV-related test for the purpose of research, if the
17 testing is performed in a manner by which the identity of the
18 test subject is not known and may not be retrieved by the
19 researcher.

20 9. When human tissue is collected lawfully without the
21 consent of the donor for corneal removal as authorized by s.
22 732.9185 or enucleation of the eyes as authorized by s.
23 732.919.

24 10. For the performance of an HIV test upon an
25 individual who comes into contact with medical personnel in
26 such a way that a significant exposure has occurred during the
27 course of employment or within the scope of practice and where
28 a blood sample is available that was taken from that
29 individual voluntarily by medical personnel for other
30 purposes. "Medical personnel" includes a licensed or
31 certified health care professional; an employee of a health

1 care professional, health care facility, or blood bank; and a
2 paramedic or emergency medical technician as defined in s.
3 401.23.

4 a. Prior to performance of an HIV test on a
5 voluntarily obtained blood sample, the individual from whom
6 the blood was obtained shall be requested to consent to the
7 performance of the test and to the release of the results.
8 The individual's refusal to consent and all information
9 concerning the performance of an HIV test and any HIV test
10 result shall be documented only in the medical personnel's
11 record unless the individual gives written consent to entering
12 this information on the individual's medical record.

13 b. Reasonable attempts to locate the individual and to
14 obtain consent shall be made and all attempts must be
15 documented. If the individual cannot be found, an HIV test may
16 be conducted on the available blood sample. If the individual
17 does not voluntarily consent to the performance of an HIV
18 test, the individual shall be informed that an HIV test will
19 be performed, and counseling shall be furnished as provided in
20 this section. However, HIV testing shall be conducted only
21 after a licensed physician documents, in the medical record of
22 the medical personnel, that there has been a significant
23 exposure and that, in the physician's medical judgment, the
24 information is medically necessary to determine the course of
25 treatment for the medical personnel.

26 c. Costs of any HIV test of a blood sample performed
27 with or without the consent of the individual, as provided in
28 this subparagraph, shall be borne by the medical personnel or
29 the employer of the medical personnel. However, costs of
30 testing or treatment not directly related to the initial HIV
31 tests or costs of subsequent testing or treatment shall not be

1 borne by the medical personnel or the employer of the medical
2 personnel.

3 d. In order to utilize the provisions of this
4 subparagraph, the medical personnel must either be tested for
5 HIV pursuant to this section or provide the results of an HIV
6 test taken within 6 months prior to the significant exposure
7 if such test results are negative.

8 e. A person who receives the results of an HIV test
9 pursuant to this subparagraph shall maintain the
10 confidentiality of the information received and of the persons
11 tested. Such confidential information is exempt from s.
12 119.07(1).

13 f. If the source of the exposure will not voluntarily
14 submit to HIV testing and a blood sample is not available, the
15 medical personnel or the employer of such person acting on
16 behalf of the employee may seek a court order directing the
17 source of the exposure to submit to HIV testing. A sworn
18 statement by a physician licensed under chapter 458 or chapter
19 459 that a significant exposure has occurred and that, in the
20 physician's medical judgment, testing is medically necessary
21 to determine the course of treatment constitutes probable
22 cause for the issuance of an order by the court. The results
23 of the test shall be released to the source of the exposure
24 and to the person who experienced the exposure.

25 11. For the performance of an HIV test upon an
26 individual who comes into contact with medical personnel in
27 such a way that a significant exposure has occurred during the
28 course of employment or within the scope of practice of the
29 medical personnel while the medical personnel provides
30 emergency medical treatment to the individual; or who comes
31 into contact with nonmedical personnel in such a way that a

1 significant exposure has occurred while the nonmedical
2 personnel provides emergency medical assistance during a
3 medical emergency. For the purposes of this subparagraph, a
4 medical emergency means an emergency medical condition outside
5 of a hospital or health care facility that provides physician
6 care. The test may be performed only during the course of
7 treatment for the medical emergency.

8 a. An individual who is capable of providing consent
9 shall be requested to consent to an HIV test prior to the
10 testing. The individual's refusal to consent, and all
11 information concerning the performance of an HIV test and its
12 result, shall be documented only in the medical personnel's
13 record unless the individual gives written consent to entering
14 this information on the individual's medical record.

15 b. HIV testing shall be conducted only after a
16 licensed physician documents, in the medical record of the
17 medical personnel or nonmedical personnel, that there has been
18 a significant exposure and that, in the physician's medical
19 judgment, the information is medically necessary to determine
20 the course of treatment for the medical personnel or
21 nonmedical personnel.

22 c. Costs of any HIV test performed with or without the
23 consent of the individual, as provided in this subparagraph,
24 shall be borne by the medical personnel or the employer of the
25 medical personnel or nonmedical personnel. However, costs of
26 testing or treatment not directly related to the initial HIV
27 tests or costs of subsequent testing or treatment shall not be
28 borne by the medical personnel or the employer of the medical
29 personnel or nonmedical personnel.

30 d. In order to utilize the provisions of this
31 subparagraph, the medical personnel or nonmedical personnel

1 shall be tested for HIV pursuant to this section or shall
2 provide the results of an HIV test taken within 6 months prior
3 to the significant exposure if such test results are negative.

4 e. A person who receives the results of an HIV test
5 pursuant to this subparagraph shall maintain the
6 confidentiality of the information received and of the persons
7 tested. Such confidential information is exempt from s.
8 119.07(1).

9 f. If the source of the exposure will not voluntarily
10 submit to HIV testing and a blood sample was not obtained
11 during treatment for the medical emergency, the medical
12 personnel, the employer of the medical personnel acting on
13 behalf of the employee, or the nonmedical personnel may seek a
14 court order directing the source of the exposure to submit to
15 HIV testing. A sworn statement by a physician licensed under
16 chapter 458 or chapter 459 that a significant exposure has
17 occurred and that, in the physician's medical judgment,
18 testing is medically necessary to determine the course of
19 treatment constitutes probable cause for the issuance of an
20 order by the court. The results of the test shall be released
21 to the source of the exposure and to the person who
22 experienced the exposure.

23 12. For the performance of an HIV test by the medical
24 examiner upon a deceased individual who is the source of a
25 significant exposure to medical personnel or nonmedical
26 personnel who provided emergency medical assistance and who
27 expired or could not be resuscitated during treatment for the
28 medical emergency.

29 13.12. For the performance of an HIV-related test
30 medically indicated by licensed medical personnel for medical
31 diagnosis of a hospitalized infant as necessary to provide

1 appropriate care and treatment of the infant when, after a
2 reasonable attempt, a parent cannot be contacted to provide
3 consent. The medical records of the infant shall reflect the
4 reason consent of the parent was not initially obtained. Test
5 results ~~and posttest counseling~~ shall be provided to the
6 parent when the parent is located.

7 14. For the performance of HIV testing conducted to
8 monitor the clinical progress of a patient previously
9 diagnosed to be HIV positive.

10 15. For the performance of repeated HIV testing
11 conducted to monitor possible conversion from a significant
12 exposure.

13 (4) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY
14 HUMAN IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.--

15 (a) The Department of Health shall establish a network
16 of voluntary human immunodeficiency virus testing programs in
17 every county in the state. These programs shall be conducted
18 in each ~~county~~ health department established under the
19 provisions of part I of chapter 154. Additional programs may
20 be contracted to other private providers to the extent that
21 finances permit and local circumstances dictate.

22 (b) Each county health department shall have the
23 ability to provide counseling and testing for human
24 immunodeficiency virus to each patient who receives services
25 and shall offer such testing on a voluntary basis to each
26 patient who presents himself or herself for services in a
27 public health program designated by the State Health Officer
28 by rule.

29 (c) Each county health department shall provide a
30 program of counseling and testing for human immunodeficiency
31 virus infection, on both an anonymous and confidential basis.

1 Counseling provided to a patient tested on both an anonymous
2 and confidential basis shall include informing the patient of
3 the availability of partner-notification services, the
4 benefits of such services, and the confidentiality protections
5 available as part of such services. The Department of Health
6 or its designated agent shall continue to provide for
7 anonymous testing through an alternative testing site program
8 with sites throughout all areas of the state. Each county
9 health department shall maintain a list of anonymous testing
10 sites. The list shall include the locations, phone numbers,
11 and hours of operation of the sites and shall be disseminated
12 to all persons and programs offering human immunodeficiency
13 virus testing within the service area of the county health
14 department, including physicians licensed under chapter 458 or
15 chapter 459. Except as provided in this section, the identity
16 of a person upon whom a test has been performed and test
17 results are confidential and exempt from the provisions of s.
18 119.07(1).

19 (d) The result of a serologic test conducted under the
20 auspices of the Department of Health shall not be used to
21 determine if a person may be insured for disability, health,
22 or life insurance or to screen or determine suitability for,
23 or to discharge a person from, employment. Any person who
24 violates the provisions of this subsection is guilty of a
25 misdemeanor of the first degree, punishable as provided in s.
26 775.082 or s. 775.083.

27 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
28 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
29 REGISTRATION.--No county health department and no other person
30 in this state shall conduct or hold themselves out to the
31 public as conducting a testing program for acquired immune

1 deficiency syndrome, ~~acquired immune deficiency syndrome~~
2 ~~related complex~~, or human immunodeficiency virus status
3 without first registering with the Department of Health,
4 reregistering each year, complying with all other applicable
5 provisions of state law, and meeting the following
6 requirements:

7 (a) The program must be directed by a person with a
8 minimum number of contact hours of experience in the
9 counseling of persons with acquired immune deficiency
10 syndrome, ~~acquired immune deficiency syndrome related complex~~,
11 or human immunodeficiency virus infection, as established by
12 the Department of Health by rule.

13 (b) The program must have all medical care supervised
14 by a physician licensed under the provisions of chapter 458 or
15 chapter 459.

16 (c) The program shall have all laboratory procedures
17 performed in a laboratory licensed under the provisions of
18 chapter 483.

19 (d) The program must meet all the informed consent
20 criteria contained in subsection (3).

21 (e) The program must provide the opportunity for
22 pretest counseling on the meaning of a test for human
23 immunodeficiency virus, including medical indications for the
24 test; the possibility of false positive or false negative
25 results; the potential need for confirmatory testing; the
26 potential social, medical, and economic consequences of a
27 positive test result; and the need to eliminate high-risk
28 behavior.

29 (f) The program must provide supplemental
30 corroborative testing on all positive test results before the
31 results of any positive test are provided to the patient.

1 Except as provided in this section, the identity of any person
2 upon whom a test has been performed and test results are
3 confidential and exempt from the provisions of s. 119.07(1).

4 (g) The program must provide the opportunity for
5 face-to-face posttest counseling on the meaning of the test
6 results; the possible need for additional testing; the social,
7 medical, and economic consequences of a positive test result;
8 and the need to eliminate behavior which might spread the
9 disease to others.

10 (h) Each person providing posttest counseling to a
11 patient with a positive test result shall receive specialized
12 training, to be specified by rule of the department, about the
13 special needs of persons with positive results, including
14 recognition of possible suicidal behavior, and shall refer the
15 patient for further health and social services as appropriate.

16 (i) When services are provided for a charge during
17 pretest counseling, testing, supplemental testing, and
18 posttest counseling, the program must provide a complete list
19 of all such charges to the patient and the Department of
20 Health.

21 (j) Nothing in this subsection shall be construed to
22 require a facility licensed under chapter 483 or a person
23 licensed under the provisions of chapter 457, chapter 458,
24 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
25 467 to register with the Department of Health if he or she
26 does not advertise or hold himself or herself out to the
27 public as conducting testing programs for human
28 immunodeficiency virus infection or specializing in such
29 testing.

30 (k) The department shall deny, suspend, or revoke the
31 registration of any person or agency that violates this

1 section, or any rule adopted under this section, constituting
2 an emergency affecting the immediate health, safety, and
3 welfare of a person receiving service.

4 (6) PENALTIES.--

5 (a) Any violation of this section by a facility or
6 licensed health care provider shall be a ground for
7 disciplinary action contained in the facility's or
8 professional's respective licensing chapter.

9 (b) Any person who violates the confidentiality
10 provisions of this section and s. 951.27 commits a misdemeanor
11 of the first degree, punishable as provided in s. 775.082 or
12 s. 775.083.

13 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
14 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
15 develop, by rule, a model protocol consistent with the
16 provisions of this section for counseling and testing persons
17 for the human immunodeficiency virus. The protocol shall
18 include criteria for evaluating a patient's risk for human
19 immunodeficiency virus infection and for offering human
20 immunodeficiency virus testing, on a voluntary basis, as a
21 routine part of primary health care or admission to a health
22 care facility. The Department of Health shall ensure that the
23 protocols developed under this section are made available to
24 health care providers.

25 Section 3. Section 384.25, Florida Statutes, is
26 amended to read:

27 384.25 Reporting required.--

28 (1) Each person who makes a diagnosis of or treats a
29 person with a sexually transmissible disease and each
30 laboratory that performs a test for a sexually transmissible
31 disease which concludes with a positive result shall report

1 such facts as may be required by the department by rule,
2 within a time period as specified by rule of the department,
3 but in no case to exceed 2 weeks.

4 (2) The department shall adopt rules specifying the
5 information required in and a minimum time period for
6 reporting a sexually transmissible disease. In adopting such
7 rules, the department shall consider the need for information,
8 protections for the privacy and confidentiality of the
9 patient, and the practical ability of persons and laboratories
10 to report in a reasonable fashion. To ensure the
11 confidentiality of persons infected with the human
12 immunodeficiency virus (HIV), reporting of HIV infection and
13 acquired immune deficiency syndrome (AIDS) must be conducted
14 using the HIV/AIDS Reporting System (HARS) developed by the
15 Centers for Disease Control and Prevention of the United
16 States Public Health Service.

17 (3) The department shall require reporting of
18 physician diagnosed cases of AIDS based upon diagnostic
19 criteria from the Centers for Disease Control and Prevention.

20 (4) The department may require physician and
21 laboratory reporting of HIV infection. However, only reports
22 of HIV infection identified on or after the effective date of
23 the rule developed by the department pursuant to this
24 subsection shall be accepted. The reporting may not affect or
25 relate to anonymous HIV testing programs conducted pursuant to
26 s. 381.004(4) or to university-based medical research
27 protocols as determined by the department.

28 (5) After notification of the test subject under
29 subsection (4), the department may, with the consent of the
30 test subject, notify school superintendents of students and
31 school personnel whose HIV tests are positive.

1 (6) The department shall by February 1 of each year
2 submit to the Legislature an annual report relating to all
3 information obtained pursuant to this section.

4 ~~(7) The rules adopted by the department pursuant to
5 this section shall specify the protocols for the reporting
6 required or permitted by subsection (3) or subsection (4).
7 The protocol developed for implementation of subsection (4)
8 shall include, but need not be limited to, information to be
9 given to a test subject during pretest counseling, including:~~

10 ~~(a) The fact that a positive HIV test result may be
11 reported to the county health department with sufficient
12 information to identify the test subject and the availability
13 and location of anonymous testing sites; and~~

14 ~~(b) The partner notification services available
15 through the county health departments, the benefits of such
16 services, and the confidentiality protections available as
17 part of such services.~~

18 (7)~~(8)~~ Each person who violates the provisions of this
19 section or the rules adopted hereunder may be fined by the
20 department up to \$500 for each offense. The department shall
21 report each violation of this section to the regulatory agency
22 responsible for licensing each health care professional and
23 each laboratory to which these provisions apply.

24 Section 4. Subsection (1) of section 455.604, Florida
25 Statutes, is amended to read:

26 455.604 Requirement for instruction for certain
27 licensees on human immunodeficiency virus and acquired immune
28 deficiency syndrome.--

29 (1) The appropriate board shall require each person
30 licensed or certified under chapter 457; chapter 458; chapter
31 459; chapter 460; chapter 461; chapter 463; chapter 464;

1 chapter 465; chapter 466; part II, part III, or part V of
2 chapter 468; or chapter 486 to complete a continuing
3 educational course, approved by the board, on human
4 immunodeficiency virus and acquired immune deficiency syndrome
5 as part of biennial relicensure or recertification. The course
6 shall consist of education on the modes of transmission,
7 infection control procedures, clinical management, and
8 prevention of human immunodeficiency virus and acquired immune
9 deficiency syndrome. Such course shall include information on
10 current Florida law on acquired immune deficiency syndrome and
11 its impact on testing, confidentiality of test results, ~~and~~
12 treatment of patients, and any protocols and procedures
13 applicable to human immunodeficiency virus counseling and
14 testing, reporting, the offering of HIV testing to pregnant
15 women, and partner notification issues pursuant to ss. 381.004
16 and 384.25.

17 Section 5. Subsection (12) and paragraph (b) of
18 subsection (13) of section 112.0455, Florida Statutes, are
19 amended to read:

20 112.0455 Drug-Free Workplace Act.--

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

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

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

30 a. Upon receipt of a completed, signed, and dated
31 application, the agency shall require background screening, in

1 accordance with the level 2 standards for screening set forth
2 in chapter 435, of the managing employee, or other similarly
3 titled individual responsible for the daily operation of the
4 laboratory, and of the financial officer, or other similarly
5 titled individual who is responsible for the financial
6 operation of the laboratory, including billings for services.
7 The applicant must comply with the procedures for level 2
8 background screening as set forth in chapter 435, as well as
9 the requirements of s. 435.03(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

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

31

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

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

16 (13) RULES.--

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

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

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

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

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

28 (I) Codeine;

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

31 (III) Morphine;

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

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

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

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

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

26 3. Hair specimen collection procedures.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 4. Quality assurance and quality control.--

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

9 b. Quality control.--

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

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

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

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

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

31 5.a. Proficiency testing.--

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

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

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

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

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

21 b. Satisfactory performance.--

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

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

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

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

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

7 381.60225 Background screening.--

8 (1) Each applicant for certification must comply with
9 the following requirements:

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

22 (b) The Agency for Health Care Administration may
23 require background screening of any other individual who is an
24 applicant if the Agency for Health Care Administration 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

1 health care licensure requirements of this state is acceptable
2 in fulfillment of the requirements of paragraph (a).

3 (d) A provisional certification may be granted to the
4 organization, agency, or entity when each individual required
5 by this section to undergo background screening has met the
6 standards for the abuse registry background check and the
7 Department of Law Enforcement background check, but the agency
8 has not yet received background screening results from the
9 Federal Bureau of Investigation, or a request for a
10 disqualification exemption has been submitted to the agency as
11 set forth in chapter 435 but a response has not yet been
12 issued. A standard certification may be granted to the
13 organization, agency, or entity 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 paragraph.

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

28 (h) The agency may deny or revoke certification of any
29 organization, agency, or entity if the 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 renewal of certification must
7 contain the information required under paragraphs (e) and (f).

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

15 Section 7. Section 383.302, Florida Statutes, is
16 amended to read:

17 383.302 Definitions of terms used in ss.
18 383.30-383.335.--As used in ss. 383.30-383.335, ~~unless the~~
19 ~~context otherwise requires,~~ the term:

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

22 (2)(1) "Birth center" means any facility, institution,
23 or place, which is not an ambulatory surgical center or a
24 hospital or in a hospital, in which births are planned to
25 occur away from the mother's usual residence following a
26 normal, uncomplicated, low-risk pregnancy.

27 (3)(2) "Clinical staff" means individuals employed
28 full time or part time by a birth center who are licensed or
29 certified to provide care at childbirth.

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- 1 (4)~~(3)~~ "Consultant" means a physician licensed
2 pursuant to chapter 458 or chapter 459 who agrees to provide
3 advice and services to a birth center and who either:
4 (a) Is certified or eligible for certification by the
5 American Board of Obstetrics and Gynecology, or
6 (b) Has hospital obstetrical privileges.
7 ~~(4) "Department" means the Department of Health.~~
8 (5) "Governing body" means any individual, group,
9 corporation, or institution which is responsible for the
10 overall operation and maintenance of a birth center.
11 (6) "Governmental unit" means the state or any county,
12 municipality, or other political subdivision or any
13 department, division, board, or other agency of any of the
14 foregoing.
15 (7) "Licensed facility" means a facility licensed in
16 accordance with s. 383.305.
17 (8) "Low-risk pregnancy" means a pregnancy which is
18 expected to result in an uncomplicated birth, as determined
19 through risk criteria developed by rule of the department, and
20 which is accompanied by adequate prenatal care.
21 (9) "Person" means any individual, firm, partnership,
22 corporation, company, association, institution, or joint stock
23 association and means any legal successor of any of the
24 foregoing.
25 (10) "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 maternity care located in such reasonable proximity to the
29 main address of the licensee as to appear to the public to be
30 under the dominion and control of the licensee.
31

1 Section 8. Section 383.305, Florida Statutes, is
2 amended to read:

3 383.305 Licensure; issuance, renewal, denial,
4 suspension, revocation; fees; background screening.--

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

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

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

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

31

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

8 (b) The fees established pursuant to ss.
9 383.30-383.335 shall be based on actual costs incurred by the
10 agency department in the administration of its duties under
11 such sections.

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

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

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

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

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

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

6 (b) The agency may require background screening of any
7 other individual who is an applicant if the agency has
8 probable cause to believe that he or she has been convicted of
9 a crime or has committed any other offense prohibited under
10 the level 2 standards for screening set forth 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 9. Paragraph (a) of subsection (2) of section
22 383.308, Florida Statutes, is amended to read:

23 383.308 Birth center facility and equipment;
24 requirements.--

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

30 Section 10. Section 383.309, Florida Statutes, is
31 amended to read:

1 383.309 Minimum standards for birth centers; rules and
2 enforcement.--

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

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

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

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

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

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

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

4 383.31 Selection of clients; informed consent.--

5 (1)

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

9 (2)

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

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

16 383.312 Prenatal care of birth center clients.--

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

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

23 383.313 Performance of laboratory and surgical
24 services; use of anesthetic and chemical agents.--

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

31

1 conducted exclusively in connection with the diagnosis and
2 treatment of clients of the birth center.

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

5 383.318 Postpartum care for birth center clients and
6 infants.--

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

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

17 383.32 Clinical records.--

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

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

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

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

28 383.324 Inspections and investigations; inspection
29 fees.--

30
31

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

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

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

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

14 383.325 Inspection reports.--

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

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

27 383.327 Birth and death records; reports.--

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

31

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

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

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

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

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

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

22 3. Any previous violations by the licensee.

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

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

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

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

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

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

16 390.015 Application for license.--

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

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

30 (b) The agency may require background screening of any
31 other individual who is an applicant if the agency has

1 probable cause to believe that he or she has been convicted of
2 a crime or has committed any other offense prohibited under
3 the level 2 standards for screening set forth in chapter 435.

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

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

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

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

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

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

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

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

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

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

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

16 391.206 Initial application for license.--

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

19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the operator, and of the financial officer,
23 or other similarly titled individual who is responsible for
24 the financial operation of the center, including billings for
25 patient care and services. The applicant must comply with the
26 procedures for level 2 background screening as set forth in
27 chapter 435, as well as the requirements of s. 435.03(3).

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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, or a request for a disqualification
29 exemption has been submitted to the agency as set forth in
30 chapter 435 but a response has not yet been issued. A standard
31 license may be granted to the applicant upon the agency's

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

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

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

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

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

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

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

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

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

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

28 394.4787 Definitions.--As used in this section and ss.
29 394.4786, 394.4788, and 394.4789:

30
31

1 (7) "Specialty psychiatric hospital" means a hospital
2 licensed by the agency pursuant to s. 395.002(30)~~s.~~
3 ~~395.002(27)~~as a specialty psychiatric hospital.

4 Section 26. Section 394.67, Florida Statutes, is
5 amended to read:

6 394.67 Definitions.--~~As when~~ used in this part, ~~unless~~
7 ~~the context clearly requires otherwise,~~the term:

8 (1) "Advisory council" means a district advisory
9 council.

10 (2) "Agency" means the Agency for Health Care
11 Administration.

12 ~~(2) "Alcohol, drug abuse, and mental health planning~~
13 ~~council" or "council" means the council within a Department of~~
14 ~~Health and Rehabilitative Services district or subdistrict~~
15 ~~established in accordance with the provisions of this part for~~
16 ~~the purpose of assessing the alcohol, drug abuse, and mental~~
17 ~~health needs of the community and developing a plan to address~~
18 ~~those needs.~~

19 (3) "Applicant" means an individual applicant, or any
20 officer, director, agent, managing employee, or affiliated
21 person, or any partner or shareholder having an ownership
22 interest equal to a 5-percent or greater interest in the
23 corporation, partnership, or other business entity.

24 (4) "Client" means any individual receiving services
25 in any alcohol, drug abuse, or mental health facility,
26 program, or service, which facility, program, or service is
27 operated, funded, or regulated by the agency and the
28 department or regulated by the agency.

29 (5) "Crisis stabilization unit" means a program that
30 provides an alternative to inpatient hospitalization and that
31 provides brief, intensive services 24 hours a day, 7 days a

1 week, for mentally ill individuals who are in an acutely
2 disturbed state.

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

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

12 (8)~~(4)~~ "District administrator" means the person
13 appointed by the Secretary of Children and Family Health and
14 Rehabilitative Services for the purpose of administering a
15 department service district as set forth in s. 20.19.

16 (9)~~(5)~~ "District plan" or "plan" means the combined
17 district alcohol, drug abuse, and mental health plan prepared
18 by the alcohol, drug abuse, and mental health planning council
19 and approved by the district administrator and governing
20 bodies in accordance with this part.

21 (10)~~(6)~~ "Federal funds" means funds from federal
22 sources for alcohol, drug abuse, or mental health facilities
23 and programs, exclusive of federal funds that are deemed
24 eligible by the Federal Government, and are eligible through
25 state regulation, for matching purposes.

26 (11)~~(7)~~ "Governing body" means the chief legislative
27 body of a county, a board of county commissioners, or boards
28 of county commissioners in counties acting jointly, or their
29 counterparts in a charter government.

30 (12) "Licensed facility" means a facility licensed in
31 accordance with this chapter.

1 (13)~~(8)~~ "Local matching funds" means funds received
2 from governing bodies of local government, including city
3 commissions, county commissions, district school boards,
4 special tax districts, private hospital funds, private gifts,
5 both individual and corporate, and bequests and funds received
6 from community drives or any other sources.

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

10 (15)~~(9)~~ "Patient fees" means compensation received by
11 a community alcohol, drug abuse, or mental health facility for
12 services rendered to clients from any source of funds,
13 including city, county, state, federal, and private sources.

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

21 (17)~~(10)~~ "Program office" means the Alcohol, Drug
22 Abuse, and Mental Health Program Office of the Department of
23 Children and Family Health and Rehabilitative Services.

24 (18) "Residential treatment facility" means a facility
25 providing residential care and treatment to individuals
26 exhibiting symptoms of mental illness who are in need of a
27 24-hour-per-day, 7-day-a-week structured living environment,
28 respite care, or long-term community placement.

29 (19)~~(11)~~ "Service district" means a community service
30 district as established by the department under s. 20.19 for
31

1 the purpose of providing community alcohol, drug abuse, and
2 mental health services.

3 (20)~~(12)~~ "Service provider" means any agency in which
4 all or any portion of the programs or services set forth in s.
5 394.675 are carried out.

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

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

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

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 located in such reasonable proximity~~
24 ~~to the main address of the licensee as to appear to the public~~
25 ~~to be under the dominion and control of the licensee.~~

26 ~~(17) "Client" means any individual receiving services~~
27 ~~in any alcohol, drug abuse, or mental health facility,~~
28 ~~program, or service, which facility, program, or service is~~
29 ~~operated, funded, or regulated by the Department of Health and~~
30 ~~Rehabilitative Services.~~

31

1 Section 27. Section 394.875, Florida Statutes, is
2 amended to read:

3 394.875 Crisis stabilization units and residential
4 treatment facilities; authorized services; license required;
5 penalties.--

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

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

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

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

30 (4) The agency ~~department~~ may maintain an action in
31 circuit court to enjoin the unlawful operation of a crisis

1 stabilization unit or a residential treatment facility if the
2 agency ~~department~~ first gives the violator 14 days' notice of
3 its intention to maintain such action and if the violator
4 fails to apply for licensure within such 14-day period.

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

6 (a) Homes for special services licensed under chapter
7 400;

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

9 (c) Residential child caring facilities licensed under
10 s. 409.175.

11 (6) The department, in consultation with the agency,
12 may establish multiple license classifications for residential
13 treatment facilities.

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

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

30 (9) A children's crisis stabilization unit which does
31 not exceed 20 licensed beds and which provides separate

1 facilities or a distinct part of a facility, separate
2 staffing, and treatment exclusively for minors may be located
3 on the same premises as a crisis stabilization unit serving
4 adults. The department, in consultation with the agency,
5 shall adopt ~~promulgate~~ rules governing facility construction,
6 staffing and licensure requirements, and the operation of such
7 units for minors.

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

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

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

22 (b) On January 1, 1993, the facility was licensed
23 under chapters 396 and 397 as a facility for detoxification,
24 residential level I care, and outpatient treatment of
25 substance abuse.

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

29 (d) The number of beds to be licensed under chapter
30 394 is equal to or less than the number of beds licensed under
31 chapters 396 and 397 as of January 1, 1993.

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

15 (f) The licensee agrees that the facility will meet
16 all licensure requirements for a residential treatment
17 facility, including minimum standards for compliance with
18 lifesafety requirements, except those licensure requirements
19 which are in express conflict with the conditions and other
20 provisions specified in this subsection.

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

24
25 Any facility licensed under this subsection is not required to
26 provide any services to any persons except those included in
27 the specified conditions of licensure, and is exempt from any
28 requirements related to the 60-day or greater average length
29 of stay imposed on community-based residential treatment
30 facilities otherwise licensed under this chapter.

31

1 (12) Each applicant for licensure must comply with the
2 following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Section 28. Section 394.876, Florida Statutes, is
28 amended to read:

29 394.876 Applications.--

30 (1) Any person desiring to be licensed under this
31 chapter shall apply to the agency ~~department~~ on forms provided

1 by the agency ~~department~~. The application shall contain the
2 following:

3 (a) The name and address of the applicant, the name of
4 the unit or facility, and the address of the unit or facility.

5 (b)1. If the applicant is a partnership, association,
6 or other form of entity other than an individual or a
7 corporation, the name and address of each member or owner of
8 the entity.

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

13 ~~(c) Such information as the department determines to~~
14 ~~be necessary to establish the character and competency of the~~
15 ~~applicant and of the person who is or will be administrator of~~
16 ~~the unit or facility.~~

17 (c)(d) Such information as the department and the
18 agency find ~~determines~~ necessary to determine the ability of
19 the applicant to carry out its responsibilities under this
20 chapter.

21 (2) The applicant shall furnish proof satisfactory to
22 the agency ~~department~~ of its financial ability to operate the
23 unit or facility in accordance with this chapter. An
24 applicant for an original license shall submit a balance sheet
25 and a statement projecting revenues, expenses, taxes,
26 extraordinary items, and other credits and charges for the
27 first 6 months of operation.

28 (3) The applicant shall provide proof of liability
29 insurance coverage in amounts set by the department and the
30 agency by rule.

31

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

5 Section 29. Section 394.877, Florida Statutes, is
6 amended to read:

7 394.877 Fees.--

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

13 (2) All fees collected under this section shall be
14 deposited in the ~~Mental Health Care Facility Licensing~~ Trust
15 Fund.

16 Section 30. Subsections (1), (2), (5), and (6) of
17 section 394.878, Florida Statutes, are amended to read:

18 394.878 Issuance and renewal of licenses.--

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

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

27 (5) The agency ~~department~~ may issue a probationary
28 license to an applicant that has completed the application
29 requirements of this chapter but has not, at the time of the
30 application, developed an operational crisis stabilization
31 unit or residential treatment facility. The probationary

1 license shall expire 90 days after issuance and may once be
2 renewed for an additional 90-day period. The agency ~~department~~
3 may cancel a probationary license at any time.

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

10 Section 31. Section 394.879, Florida Statutes, is
11 amended to read:

12 394.879 Rules; enforcement.--

13 (1) The department, in consultation with the agency,
14 shall adopt reasonable rules to implement this chapter,
15 including, at a minimum, rules providing standards to ensure
16 that:

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

20 (b) Adequate space is provided each client of a
21 licensed facility.

22 (c) Licensed facilities are limited to an appropriate
23 number of beds.

24 (d) Each licensee establishes and implements adequate
25 infection control, housekeeping, sanitation, disaster
26 planning, and medical recordkeeping.

27 (e) Licensed facilities are established, organized,
28 and operated in accordance with programmatic standards of the
29 department.

30 (2) Minimum firesafety standards shall be established
31 and enforced by the State Fire Marshal in cooperation with the

1 department. Such standards shall be included in the rule
2 adopted by the department after consultation with the State
3 Fire Marshal.

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

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

18 Section 32. Section 394.90, Florida Statutes, is
19 amended to read:

20 394.90 Inspection; right of entry; records.--

21 (1)(a) The department and the agency may enter and
22 inspect at any time a licensed facility to determine whether
23 the facility is in compliance with this chapter and the rules
24 of the department.

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

31

1 (c) Any application for licensure under this chapter
2 constitutes full permission for the department and the agency
3 to enter and inspect the premises of the applicant or licensee
4 at any time.

5 (2) For purposes of monitoring and investigation, the
6 department and the Agency for Health Care Administration shall
7 have access to the clinical records of any client of a
8 licensee or designated facility, the provisions of s. 394.4615
9 to the contrary notwithstanding.

10 (3) The agency ~~department~~ shall schedule periodic
11 inspections of licensees so as to minimize the cost to the
12 licensees and the disruption of the licensees' programs. This
13 subsection shall not be construed to limit the authority of
14 the department and the agency to inspect the facilities of a
15 licensee at any time.

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

23 (5)(a) The agency ~~department~~ may accept, in lieu of
24 its own inspections for licensure, the survey or inspection of
25 an accrediting organization, if the provider is accredited and
26 the agency ~~department~~ receives the report of the accrediting
27 organization. The department, in consultation with the agency,
28 shall develop, and adopt by rule, specific criteria for
29 assuring that the accrediting organization has specific
30 standards and experience related to the program area being
31 licensed, specific criteria for accepting the standards and

1 survey methodologies of an accrediting organization,
2 delineations of the obligations of accrediting organizations
3 to assure adherence to those standards, criteria for
4 receiving, accepting and maintaining the confidentiality of
5 the survey and corrective action reports, and allowance for
6 the agency's ~~department's~~ participation in surveys.

7 (b) The agency ~~department~~ shall conduct compliance
8 investigations and sample validation inspections to evaluate
9 the inspection process of accrediting organizations to ensure
10 minimum standards are maintained as provided in Florida
11 statute and rule. The agency ~~department~~ may conduct a
12 lifesafety inspection in calendar years in which an
13 accrediting organization survey is not conducted and shall
14 conduct a full state inspection, including a lifesafety
15 inspection, if an accrediting organization survey has not been
16 conducted within the previous 36 months. The agency
17 ~~department~~, by accepting the survey or inspection of an
18 accrediting organization, does not forfeit its right to
19 perform inspections.

20 Section 33. Section 394.902, Florida Statutes, is
21 amended to read:

22 394.902 Denial, suspension, and revocation; other
23 remedies.--

24 (1) The agency ~~department~~ may issue an emergency order
25 suspending or revoking a license if the agency ~~department~~
26 determines that the continued operation of the licensed
27 facility presents a clear and present danger to the public
28 health or safety.

29 (2) The agency ~~department~~ may impose a moratorium on
30 elective admissions to a licensee or any program or portion of
31 a licensed facility if the agency ~~department~~ determines that

1 any condition in the facility presents a threat to the public
2 health or safety.

3 (3) If the agency ~~department~~ determines that an
4 applicant or licensee is not in compliance with this chapter
5 or the rules adopted under this chapter, the agency ~~department~~
6 may deny, suspend, or revoke the license or application or may
7 suspend, revoke, or impose reasonable restrictions on any
8 portion of the license. If a license is revoked, the licensee
9 is barred from submitting any application for licensure to the
10 agency ~~department~~ for a period of 6 months following
11 revocation.

12 (4) The agency ~~department~~ may maintain an action in
13 circuit court to enjoin the operation of any licensed or
14 unlicensed facility in violation of this chapter or the rules
15 adopted under this chapter.

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

18 Section 34. Subsections (1), (2), and (11) of section
19 394.903, Florida Statutes, are amended to read:

20 394.903 Receivership proceedings.--

21 (1) The agency, independently or in conjunction with
22 the department may petition a court of competent jurisdiction
23 for the appointment of a receiver for a crisis stabilization
24 unit or a residential treatment facility when any of the
25 following conditions exist:

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

29 (b) The licensee is closing the unit or facility or
30 has informed the agency ~~department~~ that it intends to close
31 and adequate arrangements have not been made for relocation of

1 the residents within 7 days, exclusive of weekends and
2 holidays, of the closing of the unit or facility.

3 (c) The agency ~~department~~ determines that conditions
4 exist in the unit or facility which present an imminent danger
5 to the health, safety, or welfare of the residents of the unit
6 or facility or a substantial probability that death or serious
7 physical harm would result therefrom. The agency ~~department~~
8 shall, whenever possible, facilitate the continued operation
9 of the program.

10 (d) The licensee cannot meet its financial obligations
11 for providing food, shelter, care, and utilities. Issuance of
12 bad checks or accumulation of delinquent bills for such items
13 as personnel salaries, food, drugs, or utilities constitutes
14 ~~shall constitute~~ prima facie evidence that the ownership of
15 the unit or facility lacks the financial ability to operate
16 the unit or facility in accordance with the requirements of
17 this chapter and all rules adopted under this chapter
18 ~~hereunder~~.

19 (2) Petitions for receivership shall take precedence
20 over other court business unless the court determines that
21 some other pending proceeding, having similar statutory
22 precedence, shall have priority. A hearing shall be conducted
23 within 5 days after ~~of~~ the filing of the petition, at which
24 time all interested parties shall have the opportunity to
25 present evidence pertaining to the petition. The agency
26 ~~department~~ shall notify the owner or operator of the unit or
27 facility named in the petition of its filing and the dates for
28 the hearing. The court shall grant the petition only upon
29 finding that the health, safety, and welfare of residents of
30 the unit or facility would be threatened if a condition
31 existing at the time the petition was filed is permitted to

1 continue. A receiver shall not be appointed ex parte unless
2 the court determines that one or more of the conditions of
3 subsection (1) exist and that the owner or operator cannot be
4 found, that all reasonable means of locating the owner or
5 operator and notifying him or her of the petition and hearing
6 have been exhausted, or that the owner or operator after
7 notification of the hearing chooses not to attend. After such
8 findings, the court may appoint any person qualified by
9 education, training, or experience to carry out the
10 responsibilities of receiver pursuant to this section, except
11 that it shall not appoint any owner or affiliate of the unit
12 or facility which is in receivership. Prior to the
13 appointment as receiver of a person who is the operator,
14 manager, or supervisor of another unit or facility, the court
15 shall determine that the person can reasonably operate,
16 manage, or supervise more than one unit or facility. The
17 receiver may be appointed for up to 90 days, with the option
18 of petitioning the court for 30-day extensions. The receiver
19 may be selected from a list of persons qualified to act as
20 receivers developed by the agency ~~department~~ and presented to
21 the court with each petition for receivership. ~~Under no~~
22 ~~circumstances shall~~ The agency or department or a designated
23 ~~departmental~~ employee of either, may not be appointed as a
24 receiver for more than 60 days; however, such ~~the departmental~~
25 receiver may petition the court for 30-day extensions. The
26 agency ~~department~~ may petition the court to appoint a
27 substitute receiver. The court shall grant the extension upon
28 a showing of good cause. During the first 60 days of the
29 receivership, the agency may ~~department shall~~ not take action
30 to decertify or revoke the license of a unit or facility
31 unless conditions causing imminent danger to the health and

1 welfare of the residents exist and a receiver has been unable
2 to remove those conditions. After the first 60 days of
3 receivership, and every 60 days thereafter until the
4 receivership is terminated, the agency ~~department~~ shall submit
5 to the court the results of an assessment of the unit's or
6 facility's ability to assure the safety and care of the
7 residents. If the conditions at the unit or facility or the
8 intentions of the owner indicate that the purpose of the
9 receivership is to close the unit or facility rather than to
10 facilitate its continued operations, the department, in
11 consultation with the agency, shall place the residents in
12 appropriate alternative residential settings as quickly as
13 possible. If, in the opinion of the court, the agency
14 ~~department~~ has not been diligent in its efforts to make
15 adequate placement arrangements, the court may find the agency
16 ~~department~~ to be in contempt and shall order the agency
17 ~~department~~ to submit its plans for moving the residents.

18 (11) Nothing in this section shall be construed to
19 relieve any owner, operator, or employee of a unit or facility
20 placed in receivership of any civil or criminal liability
21 incurred, or any duty imposed by law, by reason of acts or
22 omissions of the owner, operator, or employee prior to the
23 appointment of a receiver; nor shall anything contained in
24 this section be construed to suspend during the receivership
25 any obligation of the owner, operator, or employee for payment
26 of taxes or other operating and maintenance expenses of the
27 unit or facility or of the owner, operator, or employee or any
28 other person for the payment of mortgages or liens. The owner
29 shall retain the right to sell or mortgage any unit or
30 facility under receivership, subject to approval of the court
31 which ordered the receivership. Receivership imposed under

1 the provisions of this chapter shall be subject to the ~~Mental~~
2 Health Care Facility Licensing Trust Fund pursuant to s.
3 394.904. The owner of a facility placed in receivership by
4 the court shall be liable for all expenses and costs incurred
5 by the ~~Mental~~ Health Care Facility Licensing Trust Fund which
6 occur as a result of the receivership.

7 Section 35. Section 394.904, Florida Statutes, is
8 amended to read:

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

18 Section 36. Subsections (1), (2), (3), (7), (8), and
19 (9) of section 394.907, Florida Statutes, are amended to read:

20 394.907 Community mental health centers; quality
21 assurance programs.--

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

27 (2) ~~Effective April 1, 1989,~~Any community mental
28 health center and any facility licensed pursuant to s. 394.875
29 shall have an ongoing quality assurance program. The purpose
30 of the quality assurance program shall be to objectively and
31 systematically monitor and evaluate the appropriateness and

1 quality of client care, to ensure that services are rendered
2 consistent with reasonable, prevailing professional standards
3 and to resolve identified problems.

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

8 (a) Standards for the provision of client care and
9 treatment practices;

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

11 (c) Policies and procedures for staff development;

12 (d) Standards for facility safety and maintenance;

13 (e) Procedures for peer review and resource
14 utilization;

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

20

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

23 (7) The department shall have access to all records
24 necessary to determine agency compliance with the provisions
25 of this section. The records of quality assurance programs
26 which relate solely to actions taken in carrying out the
27 provisions of this section, and records obtained by the
28 department to determine agency compliance with ~~the provisions~~
29 ~~of~~ this section, are confidential and exempt from ~~the~~
30 ~~provisions of~~ s. 119.07(1). Such records are not admissible in
31 any civil or administrative action, except in disciplinary

1 proceedings by the Department of Business and Professional
2 Regulation and the appropriate regulatory board, nor shall
3 such records be available to the public as part of the record
4 of investigation for, and prosecution in disciplinary
5 proceedings made available to the public by the Department of
6 Business and Professional Regulation or the appropriate
7 regulatory board. Meetings or portions of meetings of quality
8 assurance program committees that relate solely to actions
9 taken pursuant to this section are exempt from ~~the provisions~~
10 ~~of~~ s. 286.011.

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

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

17 Section 37. Section 395.002, Florida Statutes, is
18 amended to read:

19 395.002 Definitions.--As used in this chapter:

20 (1) "Accrediting organizations" means the Joint
21 Commission on Accreditation of Healthcare Organizations, the
22 American Osteopathic Association, the Commission on
23 Accreditation of Rehabilitation Facilities, and the
24 Accreditation Association for Ambulatory Health Care, Inc.

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

31

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

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

5 (c) Occurs as the result of any other action or lack
6 of any other action on the part of the hospital or personnel
7 of the hospital;

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

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

12 (3) "Agency" means the Agency for Health Care
13 Administration.

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

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

1 ~~(6)(5)~~ "Biomedical waste" means any solid or liquid
2 waste as defined in s. 381.0098(2)(a).

3 ~~(7)(6)~~ "Clinical privileges" means the privileges
4 granted to a physician or other licensed health care
5 practitioner to render patient care services in a hospital,
6 but does not include the privilege of admitting patients.

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

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

16 ~~(10)(8)~~ "Emergency medical condition" means:

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

22 1. Serious jeopardy to patient health, including a
23 pregnant woman or fetus.

24 2. Serious impairment to bodily functions.

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

26 (b) With respect to a pregnant woman:

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

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

31

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

3 (11)~~(9)~~ "Emergency services and care" means medical
4 screening, examination, and evaluation by a physician, or, to
5 the extent permitted by applicable law, by other appropriate
6 personnel under the supervision of a physician, to determine
7 if an emergency medical condition exists and, if it does, the
8 care, treatment, or surgery by a physician necessary to
9 relieve or eliminate the emergency medical condition, within
10 the service capability of the facility.

11 (12)~~(10)~~ "General hospital" means any facility which
12 meets the provisions of subsection(14)~~(12)~~and which
13 regularly makes its facilities and services available to the
14 general population.

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

19 (14)~~(12)~~ "Hospital" means any establishment that:

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

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

30
31

1 However, the provisions of this chapter do not apply to any
2 institution conducted by or for the adherents of any
3 well-recognized church or religious denomination that depends
4 exclusively upon prayer or spiritual means to heal, care for,
5 or treat any person. For purposes of local zoning matters,
6 the term "hospital" includes a medical office building located
7 on the same premises as a hospital facility, provided the land
8 on which the medical office building is constructed is zoned
9 for use as a hospital; provided the premises were zoned for
10 hospital purposes on January 1, 1992.

11 (15)~~(13)~~ "Hospital bed" means a hospital accommodation
12 which is ready for immediate occupancy, or is capable of being
13 made ready for occupancy within 48 hours, excluding provision
14 of staffing, and which conforms to minimum space, equipment,
15 and furnishings standards as specified by rule of the
16 department for the provision of services specified in this
17 section to a single patient.

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

22 (17)~~(15)~~ "Injury," for purposes of reporting to the
23 agency, means any of the following outcomes if caused by an
24 adverse or untoward incident:

- 25 (a) Death;
- 26 (b) Brain damage;
- 27 (c) Spinal damage;
- 28 (d) Permanent disfigurement;
- 29 (e) Fracture or dislocation of bones or joints;
- 30 (f) Any condition requiring definitive or specialized
31 medical attention which is not consistent with the routine

1 management of the patient's case or patient's preexisting
2 physical condition;

3 (g) Any condition requiring surgical intervention to
4 correct or control;

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

8 (i) Any condition that extends the patient's length of
9 stay; or

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

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

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

24 (20)~~(18)~~ "Lifesafety" means the control and prevention
25 of fire and other life-threatening conditions on a premises
26 for the purpose of preserving human life.

27 (21) "Managing employee" means the administrator or
28 other similarly titled individual who is responsible for the
29 daily operation of the facility.

30 (22)~~(19)~~ "Medical staff" means physicians licensed
31 under chapter 458 or chapter 459 with privileges in a licensed

1 facility, as well as other licensed health care practitioners
2 with clinical privileges as approved by a licensed facility's
3 governing board.

4 (23)~~(20)~~ "Medically necessary transfer" means a
5 transfer made necessary because the patient is in immediate
6 need of treatment for an emergency medical condition for which
7 the facility lacks service capability or is at service
8 capacity.

9 (24)~~(21)~~ "Person" means any individual, partnership,
10 corporation, association, or governmental unit.

11 (25)~~(22)~~ "Premises" means those buildings, beds, and
12 equipment located at the address of the licensed facility and
13 all other buildings, beds, and equipment for the provision of
14 hospital or ambulatory surgical care located in such
15 reasonable proximity to the address of the licensed facility
16 as to appear to the public to be under the dominion and
17 control of the licensee.

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

1 ~~(27)~~(24) "Service capability" means all services
2 offered by the facility where identification of services
3 offered is evidenced by the appearance of the service in a
4 patient's medical record or itemized bill.

5 ~~(28)~~(25) "At service capacity" means the temporary
6 inability of a hospital to provide a service which is within
7 the service capability of the hospital, due to maximum use of
8 the service at the time of the request for the service.

9 ~~(29)~~(26) "Specialty bed" means a bed, other than a
10 general bed, designated on the face of the hospital license
11 for a dedicated use.

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

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

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

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

24 ~~(31)~~(28) "Stabilized" means, with respect to an
25 emergency medical condition, that no material deterioration of
26 the condition is likely, within reasonable medical
27 probability, to result from the transfer of the patient from a
28 hospital.

29 ~~(32)~~(29) "Utilization review" means a system for
30 reviewing the medical necessity or appropriateness in the
31

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

3 ~~(33)(30)~~ "Utilization review plan" means a description
4 of the policies and procedures governing utilization review
5 activities performed by a private review agent.

6 ~~(34)(31)~~ "Validation inspection" means an inspection
7 of the premises of a licensed facility by the agency to assess
8 whether a review by an accrediting organization has adequately
9 evaluated the licensed facility according to minimum state
10 standards.

11 Section 38. Section 395.0055, Florida Statutes, is
12 created to read:

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

15 (1) Upon receipt of a completed, signed, and dated
16 application, the agency shall require background screening of
17 the managing employee in accordance with the level 2 standards
18 for screening set forth in chapter 435, as well as the
19 requirements of s. 435.03(3).

20 (2) The agency may require background screening for a
21 member of the board of directors of the licensee, or an
22 officer or an individual owning 5 percent or more of the
23 licensee, if the agency has probable cause to believe that
24 such individual has been convicted of an offense prohibited
25 under the level 2 standards for screening set forth in chapter
26 435.

27 (3) 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 licensure requirements of this state is acceptable
31 in fulfillment of subsection (1).

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

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

31

1 (6) Each applicant must submit to the agency a
2 description and explanation of any conviction of an offense
3 prohibited under the level 2 standards of chapter 435 by a
4 member of the board of directors of the applicant, its
5 officers, or any individual owning 5 percent or more of the
6 applicant.

7 (7) This section does not apply to a director of a
8 not-for-profit corporation or organization if the director
9 serves solely in a voluntary capacity for the corporation or
10 organization, does not regularly take part in the day-to-day
11 operational decisions of the corporation or organization,
12 receives no remuneration for his or her services on the
13 corporation or organization's board of directors, and has no
14 financial interest and has no family members with a financial
15 interest in the corporation or organization, provided that the
16 director and the not-for-profit corporation or organization
17 include in the application a statement affirming that the
18 director's relationship to the corporation satisfies the
19 requirements of this subsection.

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

27 (9) The agency may deny or revoke licensure if the
28 applicant:

29 (a) Has falsely represented a material fact in the
30 application required by subsection (5) or subsection (6), or
31

1 has omitted any material fact from the application required by
2 subsection (5) or subsection (6); or

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

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

7 Section 39. Present subsections (4), (5), (6), (7),
8 (8), and (9) of section 395.0199, Florida Statutes, are
9 renumbered as subsections (5), (6), (7), (8), (9), and (10),
10 respectively, and a new subsection (4) is added to that
11 section, to read:

12 395.0199 Private utilization review.--

13 (4) Each applicant for registration must comply with
14 the following requirements:

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

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
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1 health care licensure requirements of this state is acceptable
2 in fulfillment of the requirements of paragraph (a).

3 (d) A provisional registration 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 registration 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 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 paragraph.

21 (g) A registration may not be granted to an applicant
22 if the applicant or managing employee has been found guilty
23 of, 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 the registration if
29 any 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 registration renewal must
7 contain the information required under paragraphs (e) and (f).

8 Section 40. Paragraph (b) of subsection (1) of section
9 400.051, Florida Statutes, is amended to read:

10 400.051 Homes or institutions exempt from the
11 provisions of this part.--

12 (1) The following shall be exempt from the provisions
13 of this part:

14 (b) Any hospital, as defined in s. 395.002(12)~~s.~~
15 ~~395.002(10)~~, that is licensed under chapter 395.

16 Section 41. Paragraph (a) of subsection (2) of section
17 400.071, Florida Statutes, is amended, present subsections
18 (4), (5), (6), (7), and (8) of that section are redesignated
19 as subsections (5), (6), (7), (8), and (9), respectively, and
20 a new subsection (4) is added to that section, to read:

21 400.071 Application for license.--

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

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

1 at least a 5-percent ~~10-percent~~ interest in the corporation;
2 and the name by which the facility is to be known.

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

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

15 (b) The agency may require background screening for a
16 member of the board of directors of the licensee or an officer
17 or an individual owning 5 percent or more of the licensee if
18 the agency has probable cause to believe that such individual
19 has been convicted of an offense prohibited under the level 2
20 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 paragraph (a). Proof of
26 compliance with background screening which has been submitted
27 within the previous 5 years to fulfill the requirements of the
28 Department of Insurance pursuant to chapter 651 as part of an
29 application for a certificate of authority to operate a
30 continuing care retirement community is acceptable in

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1 fulfillment of the Department of Law Enforcement and Federal
2 Bureau of Investigation background check.

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 license
12 may be granted to the applicant upon the agency's receipt of a
13 report of the results of the Federal Bureau of Investigation
14 background screening for each individual required by this
15 section to undergo background screening which confirms that
16 all standards have been met, or upon the granting of a
17 disqualification exemption by the agency as set forth in
18 chapter 435. Any other person who is required to undergo
19 level 2 background screening may serve in his or her capacity
20 pending the agency's receipt of the report from the Federal
21 Bureau of Investigation; however, the person may not continue
22 to serve if the report indicates any violation of background
23 screening standards and a disqualification exemption has not
24 been requested of and granted by the agency as set forth in
25 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 disclosure of ownership and control interest requirements of
31

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

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

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

23 Section 42. Section 400.411, Florida Statutes, is
24 amended to read:

25 400.411 Initial application for license; provisional
26 license.--

27 (1) Application for a license shall be made to the
28 agency on forms furnished by it and shall be accompanied by
29 the appropriate license fee. ~~The application shall contain~~
30 ~~sufficient information, as required by rules of the~~

31

1 ~~department, to establish that the applicant can provide~~
2 ~~adequate care.~~

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

6 ~~(3)~~(2) The application ~~must~~ shall be signed by the
7 applicant under oath and ~~must~~ shall contain the following:

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

11 ~~1.~~ If the applicant is a firm, partnership, or
12 association, the application shall contain the name, address,
13 date of birth, and social security number of every member
14 thereof.

15 ~~2.~~ If the applicant is a corporation, the application
16 shall contain the corporation's ~~its~~ name and address; ~~the~~
17 name, address, date of birth, and social security number of
18 each of its directors and officers; ~~and~~ and the name and address
19 of each person having at least a 5-percent ownership
20 ~~10-percent~~ interest in the corporation.

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

28 ~~(c) Information that provides a source to establish~~
29 ~~the suitable character, financial stability, and competency of~~
30 ~~the applicant and of each person specified in the application~~
31 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~

1 ~~least a 10-percent interest in the firm, partnership,~~
2 ~~association, or corporation and, if applicable, of the~~
3 ~~administrator, including~~ The name and address of any long-term
4 care facility with which the applicant, or administrator, or
5 financial officer has been affiliated through ownership or
6 employment within 5 years of the date of this license ~~the~~
7 ~~application for a license~~; and a signed affidavit disclosing
8 any financial or ownership interest that the applicant, or any
9 person listed in paragraph (a) principal, partner, or
10 ~~shareholder thereof~~, holds or has held within the last 5 years
11 in any ~~other~~ facility licensed under this part, or in any
12 other entity licensed by this ~~the~~ state or another state to
13 provide health or residential care, which facility or entity
14 closed or ceased to operate as a result of financial problems,
15 or has had a receiver appointed or a license denied, suspended
16 or revoked, or was subject to a moratorium on admissions, or
17 has had an injunctive proceeding initiated against it.

18 (d) A description and explanation of any exclusions,
19 permanent suspensions, or terminations of the applicant from
20 the Medicare or Medicaid programs. Proof of compliance with
21 disclosure of ownership and control interest requirements of
22 the Medicaid or Medicare programs shall be accepted in lieu of
23 this submission.

24 (e) ~~(d)~~ The names and addresses of ~~other~~ persons of
25 whom the agency may inquire as to the character, and
26 reputation, and financial responsibility of the owner
27 applicant and, if different from the applicant, applicable, of
28 the administrator and financial officer.

29 ~~(e) The names and addresses of other persons of whom~~
30 ~~the agency may inquire as to the financial responsibility of~~
31 ~~the applicant.~~

1 (f) Identification of all other homes or facilities,
2 including the addresses and the license or licenses under
3 which they operate, if applicable, which are currently
4 operated by the applicant or administrator and which provide
5 housing, meals, and personal services to residents ~~adults~~.

6 ~~(g) Such other reasonable information as may be~~
7 ~~required by the agency to evaluate the ability of the~~
8 ~~applicant to meet the responsibilities entailed under this~~
9 ~~part.~~

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

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

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

27 ~~(5)(4)~~ If the applicant is a continuing care facility
28 certified under ~~offers continuing care agreements, as defined~~
29 ~~in chapter 651, a copy of the facility's proof shall be~~
30 ~~furnished that the applicant has obtained a certificate of~~
31

1 authority must be provided ~~as required for operation under~~
2 ~~that chapter.~~

3 (6)(5) The applicant shall provide proof of liability
4 insurance as defined in s. 624.605.

5 (7)(6) If the applicant is a community residential
6 home, the applicant must provide proof that it has met the
7 requirements specified in chapter 419 ~~shall apply to community~~
8 ~~residential homes zoned single-family or multifamily.~~

9 (8)(7) The applicant must provide the agency with
10 proof of legal right to occupy the property. ~~This proof may~~
11 ~~include, but is not limited to, copies of recorded warranty~~
12 ~~deeds, or copies of lease or rental agreements, contracts for~~
13 ~~deeds, quitclaim deeds, or other such documentation.~~

14 (9)(8) The applicant must furnish proof that the
15 facility has received a satisfactory firesafety inspection.
16 The local ~~fire marshal or other~~ authority having jurisdiction
17 or the State Fire Marshal must conduct the inspection within
18 30 days after ~~the~~ written request by the applicant. ~~If an~~
19 ~~authority having jurisdiction does not have a certified~~
20 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
21 ~~inspection.~~

22 (10) The applicant must furnish documentation of a
23 satisfactory sanitation inspection of the facility by the
24 county health department.

25 (11) The applicant must furnish proof of compliance
26 with level 2 background screening as required under s.
27 400.4174.

28 (12)(9) A provisional license may be issued to an
29 applicant making initial application for licensure or making
30 application for a change of ownership. A provisional license
31

1 shall be limited in duration to a specific period of time not
2 to exceed 6 months, as determined by the agency.

3 ~~(13)(10)~~ A ~~No~~ county or municipality may not ~~shall~~
4 issue an occupational license that ~~which~~ is being obtained for
5 the purpose of operating a facility regulated under this part
6 without first ascertaining that the applicant has been
7 licensed to operate such facility at the specified location or
8 locations by the agency. The agency shall furnish to local
9 agencies responsible for issuing occupational licenses
10 sufficient instruction for making such ~~the above-required~~
11 determinations.

12 Section 43. Section 400.414, Florida Statutes, is
13 amended to read:

14 400.414 Denial, revocation, or suspension of license;
15 imposition of administrative fine; grounds.--

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

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

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

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

1 ~~information obtained through s. 400.411, s. 400.417, or s.~~
2 ~~400.434.~~

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

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

9 (e) One or more class I, three or more class II, or
10 five or more repeated or recurring identical or similar class
11 III violations that are similar or identical to violations of
12 this part which were identified by the agency within the last
13 2 years during the last biennial inspection, monitoring visit,
14 or complaint investigation and which, in the aggregate, affect
15 the health, safety, or welfare of the facility residents.

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

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

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 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 or related rules, at the time of license
9 application or renewal.

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

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

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

29 ~~(m)~~ Knowingly operating any unlicensed facility or
30 providing without a license any service that must be licensed
31 under this chapter.

1
2 Administrative proceedings challenging agency action under
3 this subsection shall be reviewed on the basis of the facts
4 and conditions that resulted in the agency action.

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

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

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

29 (4) The agency shall deny or revoke the license of an
30 assisted living facility that has two or more class I
31 violations that are similar or identical to violations

1 identified by the agency during a survey, inspection,
2 monitoring visit, or complaint investigation occurring within
3 the previous 2 years.

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

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

26 (6)(7) The agency shall provide to the Division of
27 Hotels and Restaurants of the Department of Business and
28 Professional Regulation, on a monthly basis, a list of those
29 assisted living facilities ~~that~~ ~~which~~ have had their licenses
30 denied, suspended, or revoked or that ~~which~~ are involved in an
31

1 appellate proceeding pursuant to s. 120.60 related to the
2 denial, suspension, or revocation of a license.

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

6 Section 44. Section 400.417, Florida Statutes, is
7 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. Limited~~
13 ~~nursing, extended congregate care, and limited mental health~~
14 ~~licenses shall expire at the same time as the facility's~~
15 ~~standard license, regardless of when issued.~~The agency shall
16 notify the facility by certified mail at least 120 days prior
17 to ~~the expiration of the license~~ that a renewal license
18 ~~relicensure~~ is necessary to continue operation. Ninety days
19 prior to the expiration date, an application for renewal shall
20 be submitted to the agency. ~~A license shall be renewed upon~~
21 ~~the filing of an application on forms furnished by the agency~~
22 ~~if the applicant has first met the requirements established~~
23 ~~under this part and all rules promulgated under this part.~~The
24 failure to file a timely renewal application shall result in a
25 late fee charged to the facility in an amount equal to 50
26 percent of the current fee.~~in effect on the last preceding~~
27 ~~regular renewal date. Late fees shall be deposited into the~~
28 ~~Health Care Trust Fund as provided in s. 400.418. The~~
29 ~~facility shall file with the application satisfactory proof of~~
30 ~~ability to operate and conduct the facility in accordance with~~
31 ~~the requirements of this part.~~

1 (2) A license shall be renewed within 90 days upon the
2 timely filing of an application on forms furnished by the
3 agency and the provision of satisfactory proof of ability to
4 operate and conduct the facility in accordance with the
5 requirements of this part and adopted rules, including ~~An~~
6 ~~applicant for renewal of a license must furnish~~ proof that the
7 facility has received a satisfactory firesafety inspection,
8 conducted by the local ~~fire marshal or other~~ authority having
9 jurisdiction or the State Fire Marshal, within the preceding
10 12 months and an affidavit or compliance with the background
11 screening requirements of s. 400.4174.

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

1 for the operation of a facility shall not be renewed if the
2 licensee has any outstanding fines assessed pursuant to this
3 part which are in final order status.

4 ~~(4)(2)~~ A licensee against whom a revocation or
5 suspension proceeding is pending at the time of license
6 renewal may be issued a conditional license effective until
7 final disposition by the agency ~~of such proceeding~~. If
8 judicial relief is sought from the final disposition, the
9 court having jurisdiction may issue a conditional license for
10 the duration of the judicial proceeding.

11 ~~(5)(3)~~ A conditional license may be issued to an
12 applicant for license renewal if ~~when~~ the applicant fails to
13 meet all standards and requirements for licensure. A
14 conditional license issued under this subsection shall be
15 limited in duration to a specific period of time not to exceed
16 6 months, as determined by the agency, and shall be
17 accompanied by an agency-approved ~~approved~~ plan of correction.

18 (6) When an extended care or limited nursing license
19 is requested during a facility's biennial license period, the
20 fee shall be prorated in order to permit the additional
21 license to expire at the end of the biennial license period.
22 The fee shall be calculated as of the date the additional
23 license application is received by the agency.

24 Section 45. Section 400.4174, Florida Statutes, is
25 amended to read:

26 400.4174 Background screening; exemptions; reports of
27 abuse in facilities.--

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

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

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

23 (b) Proof of compliance with level 2 screening
24 standards which has been submitted within the previous 5 years
25 to meet any facility or professional licensure requirements of
26 the agency or the Department of Health satisfies the
27 requirements of this subsection, provided that such proof is
28 accompanied, under penalty of perjury, by an affidavit of
29 compliance with the provisions of chapter 435. Proof of
30 compliance with the background screening requirements of the
31 Department of Insurance for applicants for a certificate of

1 authority to operate a continuing care retirement community
2 under chapter 651, submitted within the last 5 years,
3 satisfies the Department of Law Enforcement and Federal Bureau
4 of Investigation portions of a level 2 background check.

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

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

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

27 (b) The person required to be screened has been
28 continuously employed in the same type of occupation for which
29 the person is seeking employment without a breach in service
30 which exceeds 180 days, and proof of compliance with the level
31 1 screening requirement which is no more than 2 years old is

1 provided. Proof of compliance shall be provided directly from
2 one employer or contractor to another, and not from the person
3 screened. Upon request, a copy of screening results shall be
4 provided by the employer retaining documentation of the
5 screening to the person screened.

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

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

19 Section 46. Section 400.4176, Florida Statutes, is
20 amended to read:

21 400.4176 Notice of change of administrator.--If,
22 during the period for which a license is issued, the owner
23 changes administrators, the owner must notify the agency of
24 the change within 10 ~~45~~ days ~~thereof~~ and ~~must~~ provide
25 documentation within 90 days that the new administrator has
26 completed the applicable core educational requirements under
27 s. 400.452. Background screening shall be completed on any
28 new administrator ~~to establish that the individual is of~~
29 ~~suitable character~~ as specified in s. 400.4174 ~~ss.~~
30 ~~400.411(2)(c) and 400.456.~~

31

1 Section 47. Section 400.461, Florida Statutes, is
2 amended to read:

3 400.461 Short title; purpose.--

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

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

12 Section 48. A new subsection (4) is added to section
13 400.471, Florida Statutes, and present subsections (4), (5),
14 (6), (7), (8), (9), and (10) of section 400.506, Florida
15 Statutes, are redesignated as subsections (5), (6), (7), (8),
16 (9), (10), and (11), respectively, to read:

17 400.471 Application for license; fee; provisional
18 license; temporary permit.--

19 (4) Each applicant for licensure must comply with the
20 following requirements:

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

31

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

7 (c) Proof of compliance with the level 2 background
8 screening requirements of chapter 435 which has been submitted
9 within the previous 5 years in compliance with any other
10 health care or assisted living licensure requirements of this
11 state is acceptable in fulfillment of paragraph (a). Proof of
12 compliance with background screening which has been submitted
13 within the previous 5 years to fulfill the requirements of the
14 Department of Insurance pursuant to chapter 651 as part of an
15 application for a certificate of authority to operate a
16 continuing care retirement community is acceptable in
17 fulfillment of the Department of Law Enforcement and Federal
18 Bureau of Investigation background check.

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

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

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

24 Section 49. Present subsections (2), (3), (4), (5),
25 (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), and
26 (16) of section 400.506, Florida Statutes, are redesignated as
27 subsections (3), (4), (5), (6), (7), (8), (9), (10), (11),
28 (12), (13), (14), (15), (16), and (17), respectively, and a
29 new subsection (2) is added to that section, to read:

30 400.506 Licensure of nurse registries; requirements;
31 penalties.--

1 (2) Each applicant for licensure must comply with the
2 following requirements:

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

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

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

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

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

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

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

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

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

15 (h) The agency may deny or revoke the license if any
16 applicant:

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

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

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

26 Section 50. Subsection (2) of section 400.555, Florida
27 Statutes, is amended to read:

28 400.555 Application for license.--

29 (2) The applicant for licensure must furnish:

30 (a) A description of the physical and mental
31 capabilities and needs of the participants to be served and

1 the availability, frequency, and intensity of basic services
2 and of supportive and optional services to be provided;

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

8 (c) Proof of adequate liability insurance coverage.

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

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

17 Section 51. Subsection (2) of section 400.556, Florida
18 Statutes, is amended to read:

19 400.556 Denial, suspension, revocation of license;
20 administrative fines; investigations and inspections.--

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

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

27 (b) A violation of this part or of any standard or
28 rule under this part.

29 (c) A failure of persons subject to level 2 background
30 screening under s. 400.4174(1) to meet the screening standards
31 of s. 435.04, or the retention by the center of an employee

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

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

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

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

20 Section 52. Subsection (1) of section 400.557, Florida
21 Statutes, is amended to read:

22 400.557 Expiration of license; renewal; conditional
23 license or permit.--

24 (1) A license issued for the operation of an adult day
25 care center, unless sooner suspended or revoked, expires 2
26 years after the date of issuance. The agency shall notify a
27 licensee by certified mail, return receipt requested, at least
28 120 days before the expiration date that license renewal is
29 required to continue operation. At least 90 days prior to the
30 expiration date, an application for renewal must be submitted
31 to the agency. A license shall be renewed, upon the filing of

1 an application on forms furnished by the agency, if the
2 applicant has first met the requirements of this part and of
3 the rules adopted under this part. The applicant must file
4 with the application satisfactory proof of financial ability
5 to operate the center in accordance with the requirements of
6 this part and in accordance with the needs of the participants
7 to be served and an affidavit of compliance with the
8 background screening requirements of s. 400.5572.

9 Section 53. Section 400.5572, Florida Statutes, is
10 created to read:

11 400.5572 Background screening.--

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

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

18 2. An officer or board member if the owner of the
19 adult day care center is a firm, corporation, partnership, or
20 association, or any person owning 5 percent or more of the
21 facility, if the agency has probable cause to believe that
22 such person has been convicted of any offense prohibited by s.
23 435.04. For each officer, board member, or person owning 5
24 percent or more who has been convicted of any such offense,
25 the facility shall submit to the agency a description and
26 explanation of the conviction at the time of license
27 application. This subparagraph does not apply to a board
28 member of a not-for-profit corporation or organization if the
29 board member serves solely in a voluntary capacity, does not
30 regularly take part in the day-to-day operational decisions of
31 the corporation or organization, receives no remuneration for

1 his or her services, and has no financial interest and has no
2 family members with a financial interest in the corporation or
3 organization, provided that the board member and facility
4 submit a statement affirming that the board member's
5 relationship to the facility satisfies the requirements of
6 this subparagraph.

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

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

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

27 (a) Proof of compliance with level 1 screening
28 requirements obtained to meet any professional license
29 requirements in this state is provided and accompanied, under
30 penalty of perjury, by a copy of the person's current
31

1 professional license and an affidavit of current compliance
2 with the background screening requirements.

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

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

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

25 Section 54. Section 400.606, Florida Statutes, is
26 amended to read:

27 400.606 License; application; renewal; conditional
28 license or permit; certificate of need.--

29 (1) A license application must be filed on a form
30 provided by the agency and must be accompanied by the
31 appropriate license fee as well as satisfactory proof that the

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

1 profit-loss statement and, if applicable, the most recent
2 licensure inspection report.

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

13 ~~(3)(2)~~ A license issued for the operation of a
14 hospice, unless sooner suspended or revoked, shall expire
15 automatically 1 year from the date of issuance. Sixty days
16 prior to the expiration date, a hospice wishing to renew its
17 license shall submit an application for renewal to the agency
18 on forms furnished by the agency. The agency shall renew the
19 license if the applicant has first met the requirements
20 established under this part and all applicable rules and has
21 provided the information described under this section ~~in~~
22 ~~subsection (1)~~ in addition to the application. However, the
23 application for license renewal shall be accompanied by an
24 update of the plan for delivery of hospice care only if
25 information contained in the plan submitted pursuant to
26 subsection (1) is no longer applicable.

27 ~~(4)(3)~~ A hospice against which a revocation or
28 suspension proceeding is pending at the time of license
29 renewal may be issued a conditional license by the agency
30 effective until final disposition of such proceeding. If
31 judicial relief is sought from the final agency action, the

1 court having jurisdiction may issue a conditional permit for
2 the duration of the judicial proceeding.

3 ~~(5)(4)~~ The agency shall not issue a license to a
4 hospice that fails to receive a certificate of need under the
5 provisions of ss. 408.031-408.045. A licensed hospice is a
6 health care facility as that term is used in s. 408.039(5) and
7 is entitled to initiate or intervene in an administrative
8 hearing.

9 ~~(6)(5)~~ A freestanding hospice facility that is
10 primarily engaged in providing inpatient and related services
11 and that is not otherwise licensed as a health care facility
12 shall be required to obtain a certificate of need. However, a
13 freestanding hospice facility with six or fewer beds shall not
14 be required to comply with institutional standards such as,
15 but not limited to, standards requiring sprinkler systems,
16 emergency electrical systems, or special lavatory devices.

17 Section 55. Section 400.6065, Florida Statutes, is
18 created to read:

19 400.6065 Background screening.--

20 (1) Upon receipt of a completed application under s.
21 400.606, the agency shall require level 2 background screening
22 on each of the following persons, who shall be considered
23 employees for the purposes of conducting screening under
24 chapter 435:

25 (a) The hospice administrator and financial officer.

26 (b) An officer or board member if the hospice is a
27 firm, corporation, partnership, or association, or any person
28 owning 5 percent or more of the hospice if the agency has
29 probable cause to believe that such officer, board member, or
30 owner has been convicted of any offense prohibited by s.
31 435.04. For each officer, board member, or person owning 5

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

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

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

26 Section 56. Present subsections (3), (4), (5), and (6)
27 of section 400.607, Florida Statutes, are redesignated as
28 subsections (4), (5), (6), and (7), respectively, and a new
29 subsection (3) is added to that section, to read:

30 400.607 Denial, suspension, or revocation of license;
31 imposition of administrative fine; grounds; injunctions.--

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

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

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

11 Section 57. Section 400.619, Florida Statutes, is
12 amended to read:

13 400.619 Licensure application and renewal
14 requirements.--

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

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

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

30 (4) Upon receipt of a license application or license
31 renewal, and the fee, the agency shall initiate level 1

1 background screening as provided under chapter 435 on must
2 ~~check with the abuse registry and the Department of Law~~
3 ~~Enforcement concerning the adult family-care home provider,~~
4 the designated relief person applicant, all adult household
5 members, and all staff members. The agency shall also conduct
6 an onsite visit to the home that is to be licensed.

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

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

25 (5) The application must be accompanied by a
26 description and explanation of any exclusions, permanent
27 suspensions, or terminations of the applicant from
28 participation in the Medicaid or Medicare programs or any
29 other governmental health care or health insurance program.

30 (6) Unless the adult family-care home is a community
31 residential home subject to chapter 419, the applicant must

1 provide documentation, signed by the appropriate governmental
2 official, that the home has met local zoning requirements for
3 the location for which the license is sought.

4 (7)(5) Access to a licensed adult family-care home
5 must be provided at reasonable times for the appropriate
6 officials of the department, the Department of Health, the
7 Department of Children and Family Services ~~and Rehabilitative~~
8 ~~Services~~, the agency, and the State Fire Marshal, who are
9 responsible for the development and maintenance of fire,
10 health, sanitary, and safety standards, to inspect the
11 facility to assure compliance with these standards. In
12 addition, access to a licensed adult family-care home must be
13 provided at reasonable times for the long-term care ombudsman
14 council.

15 (8)(6) A license is effective for 1 year after the
16 date of issuance unless revoked sooner. Each license must
17 state the name of the provider, the address of the home to
18 which the license applies, and the maximum number of residents
19 of the home. Failure to timely file a license renewal
20 application shall result in a late fee equal to 50 percent of
21 the license fee. ~~A license may be issued with or without~~
22 ~~restrictions governing the residents or care offered in the~~
23 ~~adult family-care home.~~

24 (9)(7) A license is not transferable or applicable to
25 any location or person other than the location and ~~or~~ person
26 indicated on the license application for licensure.

27 (10)(8) The licensed maximum capacity of each adult
28 family-care home is based on the service needs of the
29 residents and the capability of the provider to meet the needs
30 of the residents. Any relative who lives in the adult
31

1 family-care home and who is ~~an aged person or~~ a disabled adult
2 or frail elder must be included in that limitation.

3 ~~(11)(9)~~ Each adult family-care home must designate at
4 least one licensed space for a resident receiving optional
5 state supplementation ~~as defined in s. 409.212~~. The
6 Department of Children and Family Health and Rehabilitative
7 Services shall specify by rule the procedures to be followed
8 for referring residents who receive optional state
9 supplementation to adult family-care homes. Those homes
10 licensed as adult foster homes or assisted living facilities
11 prior to January 1, 1994, that convert to adult family-care
12 homes, are exempt from this ~~the~~ requirement of ~~designating one~~
13 ~~space for a resident receiving optional state supplementation.~~

14 ~~(12)(10)~~ The agency may issue a conditional license to
15 a provider for the purpose of bringing the adult family-care
16 home into compliance with licensure requirements. A
17 conditional license must be limited to a specific period, not
18 exceeding 6 months, ~~as determined by the department, in~~
19 ~~consultation with the agency~~. The department shall, by rule,
20 establish criteria for issuing conditional licenses.

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

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

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

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

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

4 ~~(e) Submission of fraudulent or inaccurate information~~
5 ~~to the agency.~~

6 ~~(f) Conviction of a felony involving violence to a~~
7 ~~person.~~

8 ~~(g) Failure to pay a civil penalty assessed under this~~
9 ~~part.~~

10 (13)(12) All moneys collected under this section must
11 be deposited into the Department of Elderly Affairs
12 Administrative Trust Fund and ~~must be~~ used to offset the
13 expenses of departmental training and education for adult
14 family-care home providers.

15 (14)(13) The department shall adopt rules to implement
16 this section.

17 Section 58. Section 400.6194, Florida Statutes, is
18 created to read:

19 400.6194 Denial, revocation, or suspension of a
20 license.--The agency may deny, suspend, or revoke a license
21 for any of the following reasons:

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

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

29 (3) Submission of fraudulent information or omission
30 of any material fact on a license application or any other
31 document required by the agency.

1 (4) Failure to pay an administrative fine assessed
2 under this part.

3 (5) A violation of this part or adopted rules which
4 results in conditions or practices that directly threaten the
5 physical or emotional health, safety, or welfare of residents.

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

8 (7) Failure to submit a completed initial license
9 application or to complete an application for license renewal
10 within the specified timeframes.

11 (8) Exclusion, permanent suspension, or termination of
12 the provider from the Medicare or Medicaid program.

13 Section 59. Section 400.801, Florida Statutes, is
14 amended to read:

15 400.801 Homes for special services.--

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

17 (a) "Agency" means the~~"~~Agency for Health Care
18 Administration.~~"~~

19 (b) "Home for special services" means a site where
20 specialized health care services are provided, including
21 personal and custodial care, but not continuous nursing
22 services.

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

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

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

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

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

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

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

1 chapter 435 but a response has not yet been issued. A standard
2 license may be granted to the applicant upon the agency's
3 receipt of a report of the results of the Federal Bureau of
4 Investigation background screening for each individual
5 required by this section to undergo background screening which
6 confirms that all standards have been met, or upon the
7 granting of a disqualification exemption by the agency as set
8 forth in chapter 435. Any other person who is required to
9 undergo level 2 background screening may serve in his or her
10 capacity pending the agency's receipt of the report from the
11 Federal Bureau of Investigation. However, the person may not
12 continue to serve if the report indicates any violation of
13 background screening standards and a disqualification
14 exemption has not been requested of and granted by the agency
15 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 licensure if the
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 (5)(4) Application for license renewal must be
29 submitted 90 days before the expiration of the license.
30
31

1 ~~(6)~~(5) A change of ownership or control of a home for
2 special services must be reported to the agency in writing at
3 least 60 days before the change is scheduled to take effect.

4 ~~(7)~~(6) The agency shall adopt rules for implementing
5 and enforcing this section.

6 ~~(8)~~(7)(a) It is unlawful for any person to establish,
7 conduct, manage, or operate a home for special services
8 without obtaining a license from the agency.

9 (b) It is unlawful for any person to offer or
10 advertise to the public, in any medium whatever, specialized
11 health care services without obtaining a license from the
12 agency.

13 (c) It is unlawful for a holder of a license issued
14 under this section to advertise or represent to the public
15 that it holds a license for a type of facility other than the
16 facility for which its license is issued.

17 ~~(9)~~(8)(a) A violation of any provision of this section
18 or rules adopted by the agency for implementing this section
19 is punishable by payment of an administrative fine not to
20 exceed \$5,000.

21 (b) A violation of subsection~~(8)~~(7)or rules adopted
22 under that subsection is a misdemeanor of the first degree,
23 punishable as provided in s. 775.082 or s. 775.083. Each day
24 of continuing violation is a separate offense.

25 Section 60. Present subsections (4), (5), and (6) of
26 section 400.805, Florida Statutes, are redesignated as
27 subsections (5), (6), and (7), respectively, present
28 subsections (3) and (7) of that section are redesignated as
29 subsections (4) and (8), respectively, and amended, and a new
30 subsection (3) is added to that section, to read:

31 400.805 Transitional living facilities.--

1 (3) Each applicant for licensure must comply with the
2 following requirements:

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

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

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

25 (d) A provisional license may be granted to an
26 applicant when each individual required by this section to
27 undergo background screening has met the standards for the
28 abuse registry background check and the Department of Law
29 Enforcement background check, but the agency has not yet
30 received background screening results from the Federal Bureau
31 of Investigation, or a request for a disqualification

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

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

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

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

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

18 (h) The agency may deny or revoke licensure if the
19 applicant:

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

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

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

29 (4)(3) An application for renewal of license must be
30 submitted 90 days before the expiration of the license. Upon
31 renewal of licensure, each applicant must submit to the

1 agency, under penalty of perjury, an affidavit as set forth in
2 s. 400.805(3)(d).

3 (8)~~(7)~~(a) A violation of any provision of this section
4 or rules adopted by the agency or division under this section
5 is punishable by payment of an administrative or a civil
6 penalty fine not to exceed \$5,000.

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

11 Section 61. Subsection (2) of section 430.04, Florida
12 Statutes, is amended to read:

13 430.04 Duties and responsibilities of the Department
14 of Elderly Affairs.--The Department of Elderly Affairs shall:

15 (2) Be responsible for ensuring that each area agency
16 on aging operates in a manner to ensure that the elderly of
17 this state receive the best services possible. The department
18 shall rescind designation of an area agency on aging or take
19 intermediate measures against the agency, including corrective
20 action, unannounced special monitoring, temporary assumption
21 of operation of one or more programs by the department,
22 placement on probationary status, imposing a moratorium on
23 agency action, imposing financial penalties for
24 nonperformance, or other administrative action pursuant to
25 chapter 120, if the department finds that:

26 (a) An intentional or negligent act of the agency has
27 materially affected the health, welfare, or safety of clients,
28 or substantially and negatively affected the operation of an
29 aging services program.

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1 (b) The agency lacks financial stability sufficient to
2 meet contractual obligations or that contractual funds have
3 been misappropriated.

4 (c) The agency has committed multiple or repeated
5 violations of legal and regulatory requirements or department
6 standards.

7 (d) The agency has failed to continue the provision or
8 expansion of services after the declaration of a state of
9 emergency.

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

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

14 Section 62. Paragraphs (i) and (k) of subsection (3)
15 of section 455.654, Florida Statutes, are amended to read:

16 455.654 Financial arrangements between referring
17 health care providers and providers of health care services.--

18 (3) DEFINITIONS.--For the purpose of this section, the
19 word, phrase, or term:

20 (i) "Investment interest" means an equity or debt
21 security issued by an entity, including, without limitation,
22 shares of stock in a corporation, units or other interests in
23 a partnership, bonds, debentures, notes, or other equity
24 interests or debt instruments. ~~Except for purposes of s.~~

25 ~~455.661~~,The following investment interests shall be excepted
26 from this definition:

27 1. An investment interest in an entity that is the
28 sole provider of designated health services in a rural area;

29 2. An investment interest in notes, bonds, debentures,
30 or other debt instruments issued by an entity which provides
31 designated health services, as an integral part of a plan by

1 such entity to acquire such investor's equity investment
2 interest in the entity, provided that the interest rate is
3 consistent with fair market value, and that the maturity date
4 of the notes, bonds, debentures, or other debt instruments
5 issued by the entity to the investor is not later than October
6 1, 1996.

7 3. An investment interest in real property resulting
8 in a landlord-tenant relationship between the health care
9 provider and the entity in which the equity interest is held,
10 unless the rent is determined, in whole or in part, by the
11 business volume or profitability of the tenant or exceeds fair
12 market value; or

13 4. An investment interest in an entity which owns or
14 leases and operates a hospital licensed under chapter 395 or a
15 nursing home facility licensed under chapter 400.

16 (k) "Referral" means any referral of a patient by a
17 health care provider for health care services, including,
18 without limitation:

19 1. The forwarding of a patient by a health care
20 provider to another health care provider or to an entity which
21 provides or supplies designated health services or any other
22 health care item or service; or

23 2. The request or establishment of a plan of care by a
24 health care provider, which includes the provision of
25 designated health services or other health care item or
26 service.

27 3. ~~Except for the purposes of s. 455.661,~~The
28 following orders, recommendations, or plans of care shall not
29 constitute a referral by a health care provider:

30 a. By a radiologist for diagnostic-imaging services.

31

1 b. By a physician specializing in the provision of
2 radiation therapy services for such services.

3 c. By a medical oncologist for drugs and solutions to
4 be prepared and administered intravenously to such
5 oncologist's patient, as well as for the supplies and
6 equipment used in connection therewith to treat such patient
7 for cancer and the complications thereof.

8 d. By a cardiologist for cardiac catheterization
9 services.

10 e. By a pathologist for diagnostic clinical laboratory
11 tests and pathological examination services, if furnished by
12 or under the supervision of such pathologist pursuant to a
13 consultation requested by another physician.

14 f. By a health care provider who is the sole provider
15 or member of a group practice for designated health services
16 or other health care items or services that are prescribed or
17 provided solely for such referring health care provider's or
18 group practice's own patients, and that are provided or
19 performed by or under the direct supervision of such referring
20 health care provider or group practice.

21 g. By a health care provider for services provided by
22 an ambulatory surgical center licensed under chapter 395.

23 h. By a health care provider for diagnostic clinical
24 laboratory services where such services are directly related
25 to renal dialysis.

26 i. By a urologist for lithotripsy services.

27 j. By a dentist for dental services performed by an
28 employee of or health care provider who is an independent
29 contractor with the dentist or group practice of which the
30 dentist is a member.

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1 k. By a physician for infusion therapy services to a
2 patient of that physician or a member of that physician's
3 group practice.

4 l. By a nephrologist for renal dialysis services and
5 supplies.

6 Section 63. Subsection (1) of section 468.505, Florida
7 Statutes, is amended to read:

8 468.505 Exemptions; exceptions.--

9 (1) Nothing in this part may be construed as
10 prohibiting or restricting the practice, services, or
11 activities of:

12 (a) A person licensed in this state under chapter 457,
13 chapter 458, chapter 459, chapter 460, chapter 461, chapter
14 462, chapter 463, chapter 464, chapter 465, chapter 466,
15 chapter 480, chapter 490, or chapter 491, when engaging in the
16 profession or occupation for which he or she is licensed, or
17 of any person employed by and under the supervision of the
18 licensee when rendering services within the scope of the
19 profession or occupation of the licensee.†

20 (b) A person employed as a dietitian by the government
21 of the United States, if the person engages in dietetics
22 solely under direction or control of the organization by which
23 the person is employed.†

24 (c) A person employed as a cooperative extension home
25 economist.†

26 (d) A person pursuing a course of study leading to a
27 degree in dietetics and nutrition from a program or school
28 accredited pursuant to s. 468.509(2), if the activities and
29 services constitute a part of a supervised course of study and
30 if the person is designated by a title that clearly indicates
31 the person's status as a student or trainee.†

1 (e) A person fulfilling the supervised experience
2 component of s. 468.509, if the activities and services
3 constitute a part of the experience necessary to meet the
4 requirements of s. 468.509.†

5 (f) Any dietitian or nutritionist from another state
6 practicing dietetics or nutrition incidental to a course of
7 study when taking or giving a postgraduate course or other
8 course of study in this state, provided such dietitian or
9 nutritionist is licensed in another jurisdiction or is a
10 registered dietitian or holds an appointment on the faculty of
11 a school accredited pursuant to s. 468.509(2).†

12 (g) A person who markets or distributes food, food
13 materials, or dietary supplements, or any person who engages
14 in the explanation of the use and benefits of those products
15 or the preparation of those products, if that person does not
16 engage for a fee in dietetics and nutrition practice or
17 nutrition counseling.†

18 (h) A person who markets or distributes food, food
19 materials, or dietary supplements, or any person who engages
20 in the explanation of the use of those products or the
21 preparation of those products, as an employee of an
22 establishment permitted pursuant to chapter 465.†

23 (i) An educator who is in the employ of a nonprofit
24 organization approved by the council; a federal, state,
25 county, or municipal agency, or other political subdivision;
26 an elementary or secondary school; or an accredited
27 institution of higher education the definition of which, as
28 provided in s. 468.509(2), applies to other sections of this
29 part, insofar as the activities and services of the educator
30 are part of such employment.†

31

1 (j) Any person who provides weight control services or
2 related weight control products, provided the program has been
3 reviewed by, consultation is available from, and no program
4 change can be initiated without prior approval by a licensed
5 dietitian/nutritionist, a dietitian or nutritionist licensed
6 in another state that has licensure requirements considered by
7 the council to be at least as stringent as the requirements
8 for licensure under this part, or a registered dietitian.†

9 (k) A person employed by a hospital licensed under
10 chapter 395, or by a nursing home or assisted living facility
11 licensed under part II or part III of chapter 400, or by a
12 continuing care facility certified under chapter 651, if the
13 person is employed in compliance with the laws and rules
14 adopted thereunder regarding the operation of its dietetic
15 department.†

16 (l) A person employed by a nursing facility exempt
17 from licensing under s. 395.002(14)~~s. 395.002(12)~~, or a
18 person exempt from licensing under s. 464.022.†~~or~~

19 (m) A person employed as a dietetic technician.

20 Section 64. Section 483.101, Florida Statutes, is
21 amended to read:

22 483.101 Application for clinical laboratory license.--

23 (1) An application for a clinical laboratory license
24 must be made under oath by the owner or director ~~operator~~ of
25 the clinical laboratory or by the public official responsible
26 for operating a state, municipal, or county clinical
27 laboratory or institution that contains a clinical laboratory,
28 upon forms provided by the agency.

29 (2) Each applicant for licensure must comply with the
30 following requirements:

31

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

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

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

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, or a request for a disqualification
29 exemption has been submitted to the agency as set forth in
30 chapter 435 but a response has not yet been issued. A license
31 may be granted to the applicant upon the agency's receipt of a

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

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

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

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

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

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

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

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

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

26 (3) A license must be issued authorizing the
27 performance of one or more clinical laboratory procedures or
28 one or more tests on each specialty or subspecialty. A
29 separate license is required of all laboratories maintained on
30 separate premises even if the laboratories are operated under
31 the same management. Upon receipt of a request for an

1 application for a clinical laboratory license, the agency
2 shall provide to the applicant a copy of the rules relating to
3 licensure and operations applicable to the laboratory for
4 which licensure is sought.

5 Section 65. Section 483.106, Florida Statutes, is
6 amended to read:

7 483.106 Application for a certificate of
8 exemption.--An application for a certificate of exemption must
9 be made under oath by the owner or director ~~operator~~ of a
10 clinical laboratory that performs only waived tests as defined
11 in s. 483.041. A certificate of exemption authorizes a
12 clinical laboratory to perform waived tests. Laboratories
13 maintained on separate premises and operated under the same
14 management may apply for a single certificate of exemption or
15 multiple certificates of exemption. The agency shall, by rule,
16 specify the process for biennially issuing certificates of
17 exemption. Sections 483.011, 483.021, 483.031, 483.041,
18 483.172, 483.23, and 483.25 apply to a clinical laboratory
19 that obtains a certificate of exemption under this section.

20 Section 66. Section 483.30, Florida Statutes, is
21 amended to read:

22 483.30 Licensing of centers.--

23 (1) A person may not conduct, maintain, or operate a
24 multiphasic health testing center in this state without
25 obtaining a multiphasic health testing center license from the
26 agency. The license is valid only for the person or persons
27 to whom it is issued and may not be sold, assigned, or
28 transferred, voluntarily or involuntarily. A license is not
29 valid for any premises other than the center for which it is
30 issued. However, a new license may be secured for the new
31 location for a fixed center before the actual change, if the

1 contemplated change is in compliance with this part and the
2 rules adopted under this part. A center must be relicensed if
3 a change of ownership occurs. Application for relicensure
4 must be made 60 days before the change of ownership.

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

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

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

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

28 (d) A provisional license may be granted to an
29 applicant when each individual required by this section to
30 undergo background screening has met the standards for the
31 abuse registry background check and the Department of Law

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

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

27 (f) Each applicant must submit to the agency a
28 description and explanation of any conviction of an offense
29 prohibited under the level 2 standards of chapter 435 by a
30 member of the board of directors of the applicant, its
31 officers, or any individual owning 5 percent or more of the

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

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

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

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

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

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

1 Section 67. Section 455.661, Florida Statutes, is
2 repealed.

3 Section 68. Three full-time positions are allocated to
4 the Agency for Health Care Administration to implement and
5 administer a background screening exemption program pursuant
6 to section 400.4174, Florida Statutes, section 400.5572,
7 Florida Statutes, and chapter 435, Florida Statutes, and
8 \$166,430 is appropriated from the Health Care Trust Fund for
9 that purpose.

10 Section 69. Pursuant to section 216.262, Florida
11 Statutes, the Florida Department of Law Enforcement is granted
12 authority to establish positions in excess of the total
13 authorized positions upon submission of a proper request to
14 the Administration Commission. These positions shall be
15 established with funding from the department's Law Enforcement
16 Operating Trust Fund and shall be used to process the
17 increased workload of conducting the criminal history records
18 checks authorized under this section. These positions will be
19 earmarked by the department, and, at such time as they are no
20 longer needed, may be placed in a reserve status for future
21 use.

22 Section 70. The provisions of this act which require
23 an applicant for licensure, certification, or registration to
24 undergo background screening shall apply to any individual or
25 entity that applies, on or after July 1, 1998, for renewal of
26 a license, certificate, or registration that is subject to the
27 background screening required by this act.

28 Section 71. (1) The provisions of this act which
29 require an applicant for licensure, certification, or
30 registration to undergo background screening shall stand
31

1 repealed on June 30, 2001, unless reviewed and saved from
2 repeal through reenactment by this legislature.

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

12 (a) The Statewide Prosecutor's Office;

13 (b) The Attorney General's Office;

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

15 (d) The Department of Elder Affairs.

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

19 Section 72. This act shall take effect July 1, 1998.
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