

By the Committee on Children and Families; and Senators Forman and Sullivan

300-2085B-99

1 A bill to be entitled
2 An act relating to persons with developmental
3 disabilities; amending s. 393.062, F.S.;
4 providing legislative intent with respect to
5 the eligibility criteria for intermediate-care
6 facilities for the developmentally disabled;
7 amending s. 393.065, F.S., relating to
8 applications for developmental services;
9 conforming provisions to the transfer of duties
10 to the Department of Children and Family
11 Services; requiring that the Department of
12 Children and Family Services make certain
13 assessments with respect to prospective
14 residents of intermediate-care facilities;
15 amending ss. 393.066, 393.067, F.S.; conforming
16 provisions to the transfer of duties to the
17 Department of Children and Family Services;
18 revising requirements for emergency-management
19 plans; deleting a requirement that the Agency
20 for Health Care Administration establish
21 standards for certain facilities that serve as
22 shelters; amending s. 393.0673, F.S.;
23 increasing the amount of certain administrative
24 fines; amending s. 393.22, F.S.; requiring that
25 when persons with developmental disabilities
26 leave institutional care, a specified amount of
27 funds for the direct costs of providing such
28 care be transferred to fund community services;
29 amending s. 409.906, F.S.; authorizing the
30 Governor to direct the Agency for Health Care
31 Administration to delete an optional Medicaid

1 service pertaining to intermediate-care
2 facilities for the developmentally disabled;
3 revising the requirements for such services
4 provided as an optional Medicaid service;
5 amending s. 409.9127, F.S.; prohibiting
6 conflicts of interest between vendors that
7 provide certain preauthorization and
8 utilization review services and organizations
9 that provide services to disabled persons;
10 requiring the Agency for Health Care
11 Administration to help the Department of
12 Children and Family Services conduct certain
13 assessments; creating part X of chapter 400,
14 F.S., consisting of ss. 400.960-400.968, F.S.;
15 providing definitions; providing requirements
16 for license applications; providing
17 requirements for background screening;
18 providing for provisional licensure; providing
19 for license renewal; authorizing the Agency for
20 Health Care Administration to institute
21 injunctive proceedings to enforce part X of
22 chapter 400, F.S.; providing for personnel
23 screening; specifying grounds under which the
24 agency may take action against a licensee;
25 authorizing the agency to institute
26 receivership proceedings; providing rulemaking
27 authority; providing for the classification of
28 deficiencies; providing for the approval of
29 plans and specifications; providing for certain
30 officers of the agency, the state, and the fire
31 marshal to have a right to enter a licensed

1 facility; providing for a moratorium on
2 admissions to a facility; providing penalties;
3 requiring that the Department of Children and
4 Family Services design a system to provide
5 consumer-directed and choice-based services;
6 providing for pilot programs to test a payment
7 model; requiring a report to the Legislature;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 393.062, Florida Statutes, is
13 amended to read:

14 393.062 Legislative findings and declaration of
15 intent.--The Legislature finds and declares that existing
16 state programs for the treatment of individuals who are
17 developmentally disabled, which often unnecessarily place
18 clients in ~~large state~~ institutions, are unreasonably costly,
19 are ineffective in bringing the individual client to his or
20 her maximum potential, and are in fact debilitating to a great
21 majority of clients. A redirection in state treatment
22 programs for individuals who are developmentally disabled is
23 necessary if any significant amelioration of the problems
24 faced by such individuals is ever to take place. Such
25 redirection should place primary emphasis on programs that
26 have the potential to prevent or reduce the severity of
27 developmental disabilities. Further, the Legislature declares
28 that greatest priority shall be given to the development and
29 implementation of community-based residential placements,
30 services, and treatment programs for individuals who are
31 developmentally disabled which will enable such individuals to

1 achieve their greatest potential for independent and
2 productive living, which will enable them to live in their own
3 homes or in residences ~~facilities~~ located in their own
4 communities, and which will permit them ~~clients~~ to be diverted
5 or removed from unnecessary institutional placements. The
6 Legislature finds that the eligibility criteria for
7 intermediate-care facilities for the developmentally disabled
8 which are specified in the Medicaid state plan in effect on
9 the effective date of this act are essential to the system of
10 residential services.The Legislature declares that the goal
11 of this act, to improve the quality of life of all
12 developmentally disabled persons by the development and
13 implementation of community-based residential placements,
14 services, and treatment, cannot be met without ensuring the
15 availability of community residential opportunities for
16 developmentally disabled persons in the residential areas of
17 this state. The Legislature, therefore, declares that all
18 persons with developmental disabilities who live in licensed
19 community homes shall have a family living environment
20 comparable to other Floridians. The Legislature intends that
21 such residences shall be considered and treated as a
22 functional equivalent of a family unit and not as an
23 institution, business, or boarding home. The Legislature
24 declares that, in developing community-based programs and
25 services for individuals who are developmentally disabled,
26 private businesses, not-for-profit corporations, units of
27 local government, and other organizations capable of providing
28 needed services to clients in a cost-efficient manner shall be
29 given preference in lieu of operation of programs directly by
30 state agencies. Finally, it is the intent of the Legislature
31 that all caretakers unrelated to individuals with

1 developmental disabilities receiving care shall be of good
2 moral character.

3 Section 2. Subsection (1) of section 393.065, Florida
4 Statutes, is amended, and subsection (4) is added to that
5 section, to read:

6 393.065 Application and eligibility determination.--

7 (1) Application for services shall be made in writing
8 to the Department of Children and Family Health and
9 ~~Rehabilitative~~ Services, in the district in which the
10 applicant resides. Employees of the department's developmental
11 services program shall review each applicant for eligibility
12 within 45 days after ~~of~~ the date the application is signed for
13 children under 6 years of age and within 60 days after ~~of~~ the
14 date the application is signed for all other applicants. When
15 necessary to definitively identify individual conditions or
16 needs, the department shall provide a comprehensive
17 assessment. Only individuals whose domicile is in Florida
18 shall be eligible for services. Information accumulated by
19 other agencies, including professional reports and collateral
20 data, shall be considered in this process when available.

21 (4) The department shall assess the level of need and
22 medical necessity for prospective residents of
23 intermediate-care facilities for the developmentally disabled
24 after October 1, 1999. The department may enter into an
25 agreement with the Department of Elderly Affairs for its
26 Comprehensive Assessment and Review for Long-Term-Care
27 Services (CARES) program to conduct assessments to determine
28 the level of need and medical necessity for long-term-care
29 services under this chapter. To the extent permissible under
30 federal law, the assessments must be funded under Title XIX of
31 the Social Security Act.

1 Section 3. Subsection (1) of section 393.066, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 393.066 Community services and treatment for persons
4 who are developmentally disabled.--

5 (1) The Department of Children and Family ~~Health and~~
6 ~~Rehabilitative~~ Services shall plan, develop, organize, and
7 implement its programs of services and treatment for persons
8 who are developmentally disabled along district lines. The
9 goal of such programs shall be to allow clients to live as
10 independently as possible in their own homes or communities
11 and to achieve productive lives as close to normal as
12 possible.

13 Section 4. Subsections (3), (9), and (10) of section
14 393.067, Florida Statutes, 1998 Supplement, are amended to
15 read:

16 393.067 Licensure of residential facilities and
17 comprehensive transitional education programs.--

18 (3) An application for a license for a residential
19 facility or a comprehensive transitional education program
20 shall be made to the Department of Children and Family ~~Health~~
21 ~~and Rehabilitative~~ Services on a form furnished by it and
22 shall be accompanied by the appropriate license fee.

23 (9) The department and the Agency for Health Care
24 Administration, after consultation with the Department of
25 Community Affairs, shall adopt rules for residential
26 facilities under the respective regulatory jurisdiction of
27 each establishing minimum standards for the preparation and
28 annual update of a comprehensive emergency management plan.
29 At a minimum, the rules must provide for plan components that
30 address emergency evacuation transportation; adequate
31 sheltering arrangements; postdisaster activities, including

1 emergency power, food, and water; postdisaster transportation;
2 supplies; staffing; emergency equipment; individual
3 identification of residents and transfer of records; and
4 responding to family inquiries. The comprehensive emergency
5 management plan for all comprehensive transitional education
6 programs ~~intermediate care facilities for the developmentally~~
7 ~~disabled, facilities serving seven or more people, and for~~
8 homes serving individuals who have complex medical conditions
9 is subject to review and approval by the local emergency
10 management agency. During its review, the local emergency
11 management agency shall ensure that the following agencies, at
12 a minimum, are given the opportunity to review the plan: the
13 Agency for Health Care Administration, the Department of
14 Children and Family ~~Health and Rehabilitative~~ Services, and
15 the Department of Community Affairs. Also, appropriate
16 volunteer organizations must be given the opportunity to
17 review the plan. The local emergency management agency shall
18 complete its review within 60 days and either approve the plan
19 or advise the facility of necessary revisions.

20 ~~(10) The Agency for Health Care Administration shall~~
21 ~~establish standards for facilities and equipment to increase~~
22 ~~the extent to which facilities for intermediate care for~~
23 ~~developmentally disabled persons are structurally capable of~~
24 ~~servng as shelters and equipped to be self-supporting during~~
25 ~~and immediately following disasters.~~

26 Section 5. Subsections (1) and (2) of section
27 393.0673, Florida Statutes, are amended to read:

28 393.0673 Denial, suspension, revocation of license;
29 moratorium on admissions; administrative fines; procedures.--

30 (1) The Department of Children and Family ~~Health and~~
31 ~~Rehabilitative~~ Services may deny, revoke, or suspend a license

1 or impose an administrative fine, not to exceed~~\$1,000~~~~\$500~~
2 per violation per day, for a violation of any provision of s.
3 393.0655 or s. 393.067 or rules adopted ~~promulgated~~ pursuant
4 thereto. All hearings shall be held within the county in which
5 the licensee or applicant operates or applies for a license to
6 operate a facility as defined herein.

7 (2) The department, as a part of any final order
8 issued by it under the provisions of this chapter, may impose
9 such fine as it deems proper, except that such fine may not
10 exceed~~\$1,000~~~~\$500~~ for each violation. Each day a violation
11 of this chapter occurs constitutes a separate violation and is
12 subject to a separate fine, but in no event may the aggregate
13 amount of any fine exceed~~\$10,000~~~~\$5,000~~. Fines paid by any
14 facility licensee under the provisions of this subsection
15 shall be deposited in the Resident Protection Trust Fund and
16 expended as provided in s. 400.063.

17 Section 6. Subsection (4) is added to section 393.22,
18 Florida Statutes, to read:

19 393.22 Transfer of appropriations; barriers to
20 services; financial commitment to programs.--

21 (4) The Department of Children and Family Services and
22 the Agency for Health Care Administration jointly shall ensure
23 that whenever a number of persons move from an institution
24 serving persons with developmental disabilities which is
25 sufficient to allow an entire residential unit within that
26 institution to be closed, no less than 80 percent of the
27 direct costs of providing services to persons who had resided
28 in that unit shall be reallocated for community services.

29 Section 7. Section 409.906, Florida Statutes, 1998
30 Supplement, is amended to read:

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1 409.906 Optional Medicaid services.--Subject to
2 specific appropriations, the agency may make payments for
3 services which are optional to the state under Title XIX of
4 the Social Security Act and are furnished by Medicaid
5 providers to recipients who are determined to be eligible on
6 the dates on which the services were provided. Any optional
7 service that is provided shall be provided only when medically
8 necessary and in accordance with state and federal law.
9 Nothing in this section shall be construed to prevent or limit
10 the agency from adjusting fees, reimbursement rates, lengths
11 of stay, number of visits, or number of services, or making
12 any other adjustments necessary to comply with the
13 availability of moneys and any limitations or directions
14 provided for in the General Appropriations Act or chapter 216.
15 If necessary to safeguard the state's systems of providing
16 services to elderly and disabled persons and subject to the
17 notice and review provisions of s. 216.177, the Governor may
18 direct the Agency for Health Care Administration to amend the
19 Medicaid state plan to delete the optional Medicaid service
20 known as "Intermediate Care Facilities for the Developmentally
21 Disabled." Optional services may include:
22 (1) ADULT DENTURE SERVICES.--The agency may pay for
23 dentures, the procedures required to seat dentures, and the
24 repair and reline of dentures, provided by or under the
25 direction of a licensed dentist, for a recipient who is age 21
26 or older.
27 (2) ADULT HEALTH SCREENING SERVICES.--The agency may
28 pay for an annual routine physical examination, conducted by
29 or under the direction of a licensed physician, for a
30 recipient age 21 or older, without regard to medical
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1 necessity, in order to detect and prevent disease, disability,
2 or other health condition or its progression.

3 (3) AMBULATORY SURGICAL CENTER SERVICES.--The agency
4 may pay for services provided to a recipient in an ambulatory
5 surgical center licensed under part I of chapter 395, by or
6 under the direction of a licensed physician or dentist.

7 (4) BIRTH CENTER SERVICES.--The agency may pay for
8 examinations and delivery, recovery, and newborn assessment,
9 and related services, provided in a licensed birth center
10 staffed with licensed physicians, certified nurse midwives,
11 and midwives licensed in accordance with chapter 467, to a
12 recipient expected to experience a low-risk pregnancy and
13 delivery.

14 (5) CASE MANAGEMENT SERVICES.--The agency may pay for
15 primary care case management services rendered to a recipient
16 pursuant to a federally approved waiver, and targeted case
17 management services for specific groups of targeted
18 recipients, for which funding has been provided and which are
19 rendered pursuant to federal guidelines. The agency is
20 authorized to limit reimbursement for targeted case management
21 services in order to comply with any limitations or directions
22 provided for in the General Appropriations Act.

23 (6) CHILDREN'S DENTAL SERVICES.--The agency may pay
24 for diagnostic, preventive, or corrective procedures,
25 including orthodontia in severe cases, provided to a recipient
26 under age 21, by or under the supervision of a licensed
27 dentist. Services provided under this program include
28 treatment of the teeth and associated structures of the oral
29 cavity, as well as treatment of disease, injury, or impairment
30 that may affect the oral or general health of the individual.

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1 (7) CHIROPRACTIC SERVICES.--The agency may pay for
2 manual manipulation of the spine and initial services,
3 screening, and X rays provided to a recipient by a licensed
4 chiropractic physician.

5 (8) COMMUNITY MENTAL HEALTH SERVICES.--The agency may
6 pay for rehabilitative services provided to a recipient by a
7 mental health or substance abuse provider licensed by the
8 agency and under contract with the agency or the Department of
9 Children and Family Services to provide such services. Those
10 services which are psychiatric in nature shall be rendered or
11 recommended by a psychiatrist, and those services which are
12 medical in nature shall be rendered or recommended by a
13 physician or psychiatrist. The agency must develop a provider
14 enrollment process for community mental health providers which
15 bases provider enrollment on an assessment of service need.
16 The provider enrollment process shall be designed to control
17 costs, prevent fraud and abuse, consider provider expertise
18 and capacity, and assess provider success in managing
19 utilization of care and measuring treatment outcomes.
20 Providers will be selected through a competitive procurement
21 or selective contracting process. In addition to other
22 community mental health providers, the agency shall consider
23 for enrollment mental health programs licensed under chapter
24 395 and group practices licensed under chapter 458, chapter
25 459, chapter 490, or chapter 491. The agency is also
26 authorized to continue operation of its behavioral health
27 utilization management program and may develop new services if
28 these actions are necessary to ensure savings from the
29 implementation of the utilization management system. The
30 agency shall coordinate the implementation of this enrollment
31 process with the Department of Children and Family Services

1 and the Department of Juvenile Justice. The agency is
2 authorized to utilize diagnostic criteria in setting
3 reimbursement rates, to preauthorize certain high-cost or
4 highly utilized services, to limit or eliminate coverage for
5 certain services, or to make any other adjustments necessary
6 to comply with any limitations or directions provided for in
7 the General Appropriations Act.

8 (9) DIALYSIS FACILITY SERVICES.--Subject to specific
9 appropriations being provided for this purpose, the agency may
10 pay a dialysis facility that is approved as a dialysis
11 facility in accordance with Title XVIII of the Social Security
12 Act, for dialysis services that are provided to a Medicaid
13 recipient under the direction of a physician licensed to
14 practice medicine or osteopathic medicine in this state,
15 including dialysis services provided in the recipient's home
16 by a hospital-based or freestanding dialysis facility.

17 (10) DURABLE MEDICAL EQUIPMENT.--The agency may
18 authorize and pay for certain durable medical equipment and
19 supplies provided to a Medicaid recipient as medically
20 necessary.

21 (11) HEALTHY START SERVICES.--The agency may pay for a
22 continuum of risk-appropriate medical and psychosocial
23 services for the Healthy Start program in accordance with a
24 federal waiver. The agency may not implement the federal
25 waiver unless the waiver permits the state to limit enrollment
26 or the amount, duration, and scope of services to ensure that
27 expenditures will not exceed funds appropriated by the
28 Legislature or available from local sources.

29 (12) HEARING SERVICES.--The agency may pay for hearing
30 and related services, including hearing evaluations, hearing
31 aid devices, dispensing of the hearing aid, and related

1 repairs, if provided to a recipient by a licensed hearing aid
2 specialist, otolaryngologist, otologist, audiologist, or
3 physician.

4 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency
5 may pay for home-based or community-based services that are
6 rendered to a recipient in accordance with a federally
7 approved waiver program.

8 (14) HOSPICE CARE SERVICES.--The agency may pay for
9 all reasonable and necessary services for the palliation or
10 management of a recipient's terminal illness, if the services
11 are provided by a hospice that is licensed under part VI of
12 chapter 400 and meets Medicare certification requirements.

13 (15) INTERMEDIATE CARE FACILITY FOR THE
14 DEVELOPMENTALLY DISABLED SERVICES.--~~For the purposes of~~
15 ~~Medicaid reimbursement, "intermediate care facility for the~~
16 ~~developmentally disabled services" means services provided by~~
17 ~~a facility which is owned and operated by the state and to~~
18 ~~which~~ The agency may pay for health-related care and services
19 provided on a 24-hour-a-day basis by a facility licensed and
20 certified as a Medicaid Intermediate Care Facility for the
21 Developmentally Disabled, for a recipient who needs such care
22 because of a developmental disability ~~or related condition~~.

23 (16) INTERMEDIATE CARE SERVICES.--The agency may pay
24 for 24-hour-a-day intermediate care nursing and rehabilitation
25 services rendered to a recipient in a nursing facility
26 licensed under part II of chapter 400, if the services are
27 ordered by and provided under the direction of a physician.

28 (17) OPTOMETRIC SERVICES.--The agency may pay for
29 services provided to a recipient, including examination,
30 diagnosis, treatment, and management, related to ocular

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1 pathology, if the services are provided by a licensed
2 optometrist or physician.

3 (18) PHYSICIAN ASSISTANT SERVICES.--The agency may pay
4 for all services provided to a recipient by a physician
5 assistant licensed under s. 458.347 or s. 459.022.

6 Reimbursement for such services must be not less than 80
7 percent of the reimbursement that would be paid to a physician
8 who provided the same services.

9 (19) PODIATRIC SERVICES.--The agency may pay for
10 services, including diagnosis and medical, surgical,
11 palliative, and mechanical treatment, related to ailments of
12 the human foot and lower leg, if provided to a recipient by a
13 podiatric physician licensed under state law.

14 (20) PRESCRIBED DRUG SERVICES.--The agency may pay for
15 medications that are prescribed for a recipient by a physician
16 or other licensed practitioner of the healing arts authorized
17 to prescribe medications and that are dispensed to the
18 recipient by a licensed pharmacist or physician in accordance
19 with applicable state and federal law.

20 (21) REGISTERED NURSE FIRST ASSISTANT SERVICES.--The
21 agency may pay for all services provided to a recipient by a
22 registered nurse first assistant as described in s. 464.027.
23 Reimbursement for such services may not be less than 80
24 percent of the reimbursement that would be paid to a physician
25 providing the same services.

26 (22) STATE HOSPITAL SERVICES.--The agency may pay for
27 all-inclusive psychiatric inpatient hospital care provided to
28 a recipient age 65 or older in a state mental hospital.

29 (23) VISUAL SERVICES.--The agency may pay for visual
30 examinations, eyeglasses, and eyeglass repairs for a
31 recipient, if they are prescribed by a licensed physician

1 specializing in diseases of the eye or by a licensed
2 optometrist.

3 Section 8. Section 409.9127, Florida Statutes, is
4 amended to read:

5 409.9127 Preauthorization and concurrent utilization
6 review; conflict-of-interest standards.--

7 (1) The Agency for Health Care Administration shall be
8 solely responsible for developing and enforcing standards to
9 prohibit financial and other conflicts of interest among
10 vendors selected to provide preauthorization and concurrent
11 utilization review management with direct-service
12 organizations providing ~~alcohol~~, substance abuse, mental
13 health, or related services to clients or services to disabled
14 persons who have services authorized through the
15 preauthorization and concurrent utilization review management
16 system established to achieve cost savings in the provision of
17 ~~alcohol~~, substance abuse, mental health, or related services
18 or services to disabled persons. The agency may require the
19 posting of a surety bond to guarantee that no financial or
20 other conflicts of interest exist or will exist among vendors
21 selected to provide preauthorization and concurrent
22 utilization review management services.

23 (2) Vendors selected to conduct preauthorization or
24 concurrent utilization review management, or both, may be
25 peer-review organizations, qualified licensed clinical
26 practitioners, or public or private organizations that
27 demonstrate the ability to conduct such reviews according to
28 criteria developed by the agency and that have no financial or
29 other conflict of interest with any direct-service
30 organization providing ~~alcohol~~, substance abuse, mental
31 health, or related services or services to disabled persons.

1 Selection of vendors shall be accomplished through a
2 competitive process.

3 (3) The agency shall help the Department of Children
4 and Family Services meet the requirements of s. 393.065(4).
5 Only admissions approved pursuant to such assessments are
6 eligible for reimbursement under this chapter.

7 Section 9. Part X of chapter 400, Florida Statutes,
8 consisting of sections 400.960, 400.962, 400.963, 400.964,
9 400.965, 400.966, 400.967, and 400.968, Florida Statutes, is
10 created to read:

11 400.960 Definitions.--As used in this part, the term:

12 (1) "Active treatment" means the provision of services
13 by an interdisciplinary team which are necessary to maximize a
14 client's individual independence or prevent regression or loss
15 of functional status.

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

18 (3) "Autism" means a pervasive, neurologically based
19 developmental disability of extended duration which causes
20 severe learning, communication, and behavior disorders with
21 age of onset during infancy or childhood. Individuals with
22 autism exhibit impairment in reciprocal social interaction,
23 impairment in verbal and nonverbal communication and
24 imaginative ability, and a markedly restricted repertoire of
25 activities and interests.

26 (4) "Cerebral palsy" means a group of disabling
27 symptoms of extended duration which results from damage to the
28 developing brain occurring before, during, or after birth and
29 resulting in the loss or impairment of control over voluntary
30 muscles. The term does not include those symptoms or
31 impairments resulting solely from a stroke.

1 (5) "Client" means any person determined by the
2 department to be eligible for developmental services.

3 (6) "Client advocate" means a friend or relative of
4 the client, or of the client's immediate family, who advocates
5 for the best interests of the client in any proceedings under
6 this part in which the client or his or her family has the
7 right or duty to participate.

8 (7) "Department" means the Department of Children and
9 Family Services.

10 (8) "Developmental disability" means a disorder or
11 syndrome that is attributable to retardation, cerebral palsy,
12 autism, spina bifida, or Prader-Willi syndrome and that
13 constitutes a substantial handicap that can reasonably be
14 expected to continue indefinitely.

15 (9) "Direct service provider" means a person 18 years
16 of age or older who has direct contact with individuals with
17 developmental disabilities and who is unrelated to the
18 individuals with developmental disabilities.

19 (10) "Epilepsy" means a chronic brain disorder of
20 various causes which is characterized by recurrent seizures
21 due to excessive discharge of cerebral neurons. When found
22 concurrently with retardation, autism, or cerebral palsy,
23 epilepsy is considered a secondary disability for which the
24 client is eligible to receive services to ameliorate this
25 condition according to the provisions of this part.

26 (11) "Guardian advocate" means a person appointed by
27 the circuit court to represent a person with developmental
28 disabilities in any proceedings brought pursuant to s. 393.12,
29 and is distinct from a guardian advocate for mentally ill
30 persons under chapter 394.

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1 (12) "Intermediate care facility for the
2 developmentally disabled" means a residential facility
3 licensed and certified in accordance with state law, and
4 certified by the Federal Government, pursuant to the Social
5 Security Act, as a provider of Medicaid services to persons
6 who are developmentally disabled.

7 (13) "Prader-Willi syndrome" means an inherited
8 condition typified by neonatal hypotonia with failure to
9 thrive, hyperphagia, or an excessive drive to eat which leads
10 to obesity, usually at 18 to 36 months of age, mild to
11 moderate retardation, hypogonadism, short stature, mild facial
12 dysmorphism, and a characteristic neurobehavior.

13 (14) "Retardation" means significantly subaverage
14 general intellectual functioning existing concurrently with
15 deficits in adaptive behavior and manifested during the period
16 from conception to age 18. "Significantly subaverage general
17 intellectual functioning," for the purpose of this definition,
18 means performance that is two or more standard deviations from
19 the mean score on a standardized intelligence test specified
20 in rules of the department. "Deficits in adaptive behavior,"
21 for the purpose of this definition, means deficits in the
22 effectiveness or degree with which an individual meets the
23 standards of personal independence and social responsibility
24 expected of his or her age, cultural group, and community.

25 (15) "Spina bifida" means a medical diagnosis of spina
26 bifida cystica or myelomeningocele.

27 400.962 License required; license application.--

28 (1) It is unlawful to operate an intermediate-care
29 facility for the developmentally disabled or a comprehensive
30 transitional educational program without a license.

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1 (2) Separate licenses are required for facilities
2 maintained on separate premises even if operated under the
3 same management. However, a separate license is not required
4 for separate buildings on the same grounds.

5 (3) The basic license fee collected shall be deposited
6 in the Health Care Trust Fund, established for carrying out
7 the purposes of this chapter.

8 (4) The license must be conspicuously displayed inside
9 the facility.

10 (5) A license is valid only in the hands of the
11 individual, firm, partnership, association, or corporation to
12 whom it is issued. A license is not valid for any premises
13 other than those for which it was originally issued and may
14 not be sold, assigned, or otherwise transferred, voluntarily
15 or involuntarily.

16 (6) An application for a license shall be made to the
17 agency on forms furnished by it and must be accompanied by the
18 appropriate license fee.

19 (7) The application must be under oath and must
20 contain the following:

21 (a) The name, address, and social security number of
22 the applicant if an individual; if the applicant is a firm,
23 partnership, or association, its name, address, and employer
24 identification number (EIN), and the name and address of every
25 member; if the applicant is a corporation, its name, address,
26 and employer identification number (EIN), and the name and
27 address of its director and officers and of each person having
28 at least a 5-percent interest in the corporation; and the name
29 by which the facility is to be known.

30 (b) The name of any person whose name is required on
31 the application under paragraph (a) and who owns at least a

1 10-percent interest in any professional service, firm,
2 association, partnership, or corporation providing goods,
3 leases, or services to the facility for which the application
4 is made, and the name and address of the professional service,
5 firm, association, partnership, or corporation in which such
6 interest is held.

7 (c) The location of the facility for which a license
8 is sought and an indication that such location conforms to the
9 local zoning ordinances.

10 (d) The name of the persons under whose management or
11 supervision the facility will be operated.

12 (e) The total number of beds.

13 (8) The applicant must demonstrate that sufficient
14 numbers of staff, qualified by training or experience, will be
15 employed to properly care for the type and number of residents
16 who will reside in the facility.

17 (9) The applicant must submit evidence that
18 establishes the good moral character of the applicant,
19 manager, supervisor, and administrator. An applicant who is an
20 individual or a member of a board of directors or officer of
21 an applicant that is a firm, partnership, association, or
22 corporation must not have been convicted, or found guilty,
23 regardless of adjudication, of a crime in any jurisdiction
24 which affects or may potentially affect residents in the
25 facility.

26 (10)(a) Upon receipt of a completed, signed, and dated
27 application, the agency shall require background screening of
28 the applicant, in accordance with the level 2 standards for
29 screening set forth in chapter 435. As used in this
30 subsection, the term "applicant" means the facility
31 administrator, or similarly titled individual who is

1 responsible for the day-to-day operation of the licensed
2 facility, and the facility financial officer, or similarly
3 titled individual who is responsible for the financial
4 operation of the licensed facility.

5 (b) The agency may require background screening for a
6 member of the board of directors of the licensee or an officer
7 or an individual owning 5 percent or more of the licensee if
8 the agency has probable cause to believe that such individual
9 has been convicted of an offense prohibited under the level 2
10 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 licensure requirements under this chapter satisfies the
15 requirements of paragraph (a). Proof of compliance with
16 background screening which has been submitted within the
17 previous 5 years to fulfill the requirements of the Department
18 of Insurance under chapter 651 as part of an application for a
19 certificate of authority to operate a continuing care
20 retirement community satisfies the requirements for the
21 Department of Law Enforcement and Federal Bureau of
22 Investigation background checks.

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 license

1 may be granted to the applicant upon the agency's receipt of a
2 report of the results of the Federal Bureau of Investigation
3 background screening for each individual required by this
4 section to undergo background screening which confirms that
5 all standards have been met, or upon the granting of a
6 disqualification exemption by the agency as set forth in
7 chapter 435. Any other person who is required to undergo level
8 2 background screening may serve in his or her capacity
9 pending the agency's receipt of the report from the Federal
10 Bureau of Investigation; however, the person may not continue
11 to serve if the report indicates any violation of background
12 screening standards and a disqualification exemption has not
13 been 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 disclosure of ownership and control interest requirements of
19 the Medicaid or Medicare programs shall be accepted in lieu of
20 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's 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) An application for license renewal must contain
9 the information required under paragraphs (e) and (f).

10 (11) The applicant must furnish satisfactory proof of
11 financial ability to operate and conduct the facility in
12 accordance with the requirements of this part and all rules
13 adopted under this part, and the agency shall establish
14 standards for this purpose.

15 400.963 Injunctive proceedings.--The Agency for Health
16 Care Administration may seek a temporary or permanent
17 injunction to:

18 (1) Enforce the provisions of this part or any
19 standard, rule, or order issued or entered under this part; or

20 (2) Terminate the operation of a facility licensed
21 under this part when the facility:

22 (a) Fails to take preventative or corrective measures
23 in accordance with any order of the agency.

24 (b) Fails to abide by any final order of the agency.

25 (c) Commits any violation creating an emergency
26 requiring immediate action.

27 (3) Terminate the operation of a provider of supports
28 or services who has willfully and knowingly refused to comply
29 with the screening requirement for direct service providers or
30 has refused to terminate direct service providers found not to
31

1 be in compliance with the requirements for good moral
2 character.

3 400.964 Personnel screening requirement.--

4 (1) The agency shall require level 2 background
5 screening as provided in chapter 435 for all employees or
6 prospective employees of facilities licensed under this part
7 who are expected to be, or whose responsibilities are such
8 that they would be considered to be, a direct service
9 provider.

10 (2) Employers and employees shall comply with the
11 requirements of chapter 435.

12 (3) Applicants and employees shall be excluded from
13 employment pursuant to s. 435.06

14 (4) The applicant is responsible for paying the fees
15 associated with obtaining the required screening. Payment for
16 the screening and the abuse registry check must be submitted
17 to the agency as prescribed by the agency.

18 (5) Notwithstanding any other provision of law,
19 persons who have been screened and qualified as required by
20 this section and who have not been unemployed for more than
21 180 days thereafter, and who under penalty of perjury attest
22 to not having been convicted of a disqualifying offense since
23 the completion of such screening are not required to be
24 rescreened. An employer may obtain, pursuant to s. 435.10,
25 written verification of qualifying screening results from the
26 previous employer or other entity that caused such screening
27 to be performed.

28 (6) The agency may adopt rules to administer this
29 section.

30 (7) All employees must comply with the requirements of
31 this section by October 1, 2000. A person employed by a

1 facility licensed pursuant to this part as of the effective
2 date of this act is not required to submit to rescreening if
3 the facility has in its possession written evidence that the
4 person has been screened and qualified according to level 1
5 standards as specified in s. 435.03(1). Any current employee
6 who meets the level 1 requirement but does not meet the 5-year
7 residency requirement must provide to the employing facility
8 written attestation under penalty of perjury that the employee
9 has not been convicted of a disqualifying offense in another
10 state or jurisdiction. All applicants hired on or after
11 October 1, 1999, must comply with the requirements of this
12 section.

13 (8) There is no monetary or unemployment liability on
14 the part of, and no cause of action for damages arises against
15 an employer that, upon notice of a disqualifying offense
16 listed under chapter 435 or a confirmed report of abuse,
17 neglect, or exploitation or an act of domestic violence,
18 terminates the employee against whom the report was issued,
19 whether or not the employee has filed for an exemption with
20 the Department of Health or the Agency for Health Care
21 Administration.

22 400.965 Action by agency against licensee; grounds.--

23 (1) Any of the following conditions constitute grounds
24 for action by the agency against a licensee:

25 (a) A misrepresentation of a material fact in the
26 application;

27 (b) The commission of an intentional or negligent act
28 materially affecting the health or safety of residents of the
29 facility;

30 (c) A violation of any provision of this part or rules
31 adopted under this part; or

1 (d) The commission of any act constituting a ground
2 upon which application for a license may be denied.

3 (2) If the agency has a reasonable belief that any of
4 such conditions exists, it shall:

5 (a) In the case of an applicant for original
6 licensure, deny the application.

7 (b) In the case of an applicant for relicensure or a
8 current licensee, take administrative action as provided in s.
9 400.968 or injunctive action as authorized by s. 400.963.

10 (c) In the case of a facility operating without a
11 license, take injunctive action as authorized in s. 400.963.

12 400.966 Receivership proceeding.--

13 (1) The agency may petition a court of competent
14 jurisdiction for the appointment of a receiver for an
15 intermediate-care facility for the developmentally disabled
16 which is owned and operated by a corporation or partnership
17 when:

18 (a) Any person is operating the facility without a
19 license and refuses to apply for a license.

20 (b) The licensee is closing the facility or has
21 informed the agency that it intends to close the facility, and
22 adequate arrangements have not been made to relocate the
23 residents within 7 days, exclusive of weekends and holidays,
24 after the closing of the facility.

25 (c) The agency determines that conditions exist in the
26 facility which present an imminent danger to the health,
27 safety, or welfare of the residents of the facility or which
28 present a substantial probability that death or serious
29 physical harm would result therefrom. Whenever possible, the
30 agency shall facilitate the continued operation of the
31 program.

1 (d) The licensee cannot meet its financial obligations
2 to provide food, shelter, care, and utilities. Evidence such
3 as the issuance of bad checks or the accumulation of
4 delinquent bills for such items as personnel salaries, food,
5 drugs, or utilities constitutes prima facie evidence that the
6 ownership of the facility lacks the financial ability to
7 operate the home in accordance with the requirements of this
8 part and all rules adopted under this part.

9 (2)(a) The petition for receivership shall take
10 precedence over other court business unless the court
11 determines that some other pending proceeding, having similar
12 statutory precedence, has priority.

13 (3) A hearing must be conducted within 5 days after
14 the filing of the petition, at which time all interested
15 parties must be given the opportunity to present evidence
16 pertaining to the petition. The agency shall notify the owner
17 or operator of the facility named in the petition of its
18 filing and the date set for the hearing.

19 (4) The court shall grant the petition only upon
20 finding that the health, safety, or welfare of residents of
21 the facility would be threatened if a condition existing at
22 the time the petition was filed is permitted to continue. A
23 receiver may not be appointed ex parte unless the court
24 determines that any of the conditions listed in subsection (1)
25 exist; that the facility owner or operator cannot be found;
26 that all reasonable means of locating the owner or operator
27 and notifying him or her of the petition and hearing have been
28 exhausted; or that the owner or operator after notification of
29 the hearing chooses not to attend. After such findings, the
30 court may appoint any person qualified by education, training,
31 or experience to carry out the responsibilities of receiver

1 pursuant to this section, except that the court may not
2 appoint any owner or affiliate of the facility that is in
3 receivership. Before the appointment as receiver of a person
4 who is the operator, manager, or supervisor of another
5 facility, the court must determine that the person can
6 reasonably operate, manage, or supervise more than one
7 facility. The receiver may be appointed for up to 90 days,
8 with the option of petitioning the court for 30-day
9 extensions. The receiver may be selected from a list of
10 persons qualified to act as receivers developed by the agency
11 and presented to the court with each petition for
12 receivership. Under no circumstances may the agency or
13 designated agency employee be appointed as a receiver for more
14 than 60 days; however, the agency receiver may petition the
15 court for 30-day extensions. The court shall grant an
16 extension upon a showing of good cause. The agency may
17 petition the court to appoint a substitute receiver.

18 (5) During the first 60 days of the receivership, the
19 agency may not take action to decertify or revoke the license
20 of a facility unless conditions causing imminent danger to the
21 health and welfare of the residents exist and a receiver has
22 been unable to remove those conditions. After the first 60
23 days of receivership, and every 60 days thereafter until the
24 receivership is terminated, the agency shall submit to the
25 court the results of an assessment of the ability of the
26 facility to assure the safety and care of the residents. If
27 the conditions at the facility or the intentions of the owner
28 indicate that the purpose of the receivership is to close the
29 facility rather than to facilitate its continued operation,
30 the agency shall place the residents in appropriate
31 alternative residential settings as quickly as possible. If,

1 in the opinion of the court, the agency has not been diligent
2 in its efforts to make adequate arrangements for placement,
3 the court shall find the agency to be in contempt and shall
4 order the agency to submit its plans for moving the residents.

5 (6) The receiver shall provide for the continued
6 health, safety, and welfare of all residents of the facility
7 and:

8 (a) Shall exercise those powers and perform those
9 duties set out by the court.

10 (b) Shall operate the facility in such a manner as to
11 assure the residents' safety and adequate health care for the
12 residents.

13 (c) Shall take such action as is reasonably necessary
14 to protect or conserve the assets or property of the facility
15 for which the receiver is appointed, or the proceeds from any
16 transfer thereof, and may use them only in the performance of
17 the powers and duties set forth in this section and by order
18 of the court.

19 (d) Shall honor all leases, mortgages, and secured
20 transactions governing the building in which the facility is
21 located and all goods and fixtures in the building of which
22 the receiver has taken possession, but only to the extent of
23 payments that, in the case of a rental agreement, are for the
24 use of the property during the period of the receivership or
25 that, in the case of a purchase agreement, become due during
26 the period of the receivership.

27 (e) May use the building, fixtures, furnishings, and
28 any accompanying consumable goods in the provision of care and
29 services to residents and to any other persons receiving
30 services from the facility at the time the petition for
31 receivership was filed. The receiver shall collect payments

1 for all goods and services provided to residents or others
2 during the period of the receivership at the same rate of
3 payment charged by the owner at the time the petition for
4 receivership was filed, or at a fair and reasonable rate
5 otherwise approved by the court for private, paying residents.

6 The receiver may apply to the agency for a rate increase for
7 residents under Title XIX of the Social Security Act if the
8 facility is not receiving the state reimbursement cap and if
9 expenditures justify an increase in the rate.

10 (f) May correct or eliminate any deficiency in the
11 structure, furnishings, or staffing of the facility which
12 endangers the safety or health or residents while they remain
13 in the facility, provided that the total cost of correction
14 does not exceed \$3,000. The court may order expenditures for
15 this purpose in excess of \$3,000 on application from the
16 receiver after notice to the owner. A hearing may be requested
17 by the owner within 72 hours.

18 (g) May let contracts and hire agents and employees to
19 carry out the powers and duties of the receiver under this
20 section.

21 (h) Shall have full power to direct, manage, hire, and
22 discharge employees of the facility subject to any contract
23 rights they may have. The receiver shall hire and pay
24 employees at the rate of compensation, including benefits,
25 approved by the court. Receivership does not relieve the owner
26 of any obligations to employees which had been made before the
27 appointment of a receiver and were not carried out by the
28 receiver.

29 (i) Shall be entitled to take possession of all
30 property or assets of residents which are in the possession of
31 a facility or its owner. The receiver shall preserve all such

1 property or assets and all resident records of which the
2 receiver takes possession; and he or she shall provide for the
3 prompt transfer of the property, assets, and records of any
4 resident transferred to the resident's new placement. An
5 inventory list certified by the owner and receiver must be
6 made when the receiver takes possession of the facility.

7 (7)(a) A person who is served with notice of an order
8 of the court appointing a receiver and of the receiver's name
9 and address shall be liable to pay the receiver for any goods
10 or services provided by the receiver after the date of the
11 order if the person would have been liable for the goods or
12 services had they been supplied by the owner. The receiver
13 shall give a receipt for each payment and shall keep a copy of
14 each receipt on file. The receiver shall deposit accounts
15 received in a separate account and shall use this account for
16 all disbursements.

17 (b) The receiver may bring an action to enforce the
18 liability created by paragraph (a).

19 (c) A payment to the receiver of any sum owned to the
20 facility or its owner discharges any obligation to the
21 facility to the extent of the payment.

22 (8)(a) A receiver may petition the court that he or
23 she not be required to honor any lease, mortgage, secured
24 transaction, or other wholly or partially executory contract
25 entered into by the owner of the facility if the rent, price,
26 or rate of interest required to be paid under the agreement
27 was substantially in excess of a reasonable rent, price, or
28 rate of interest at the time the contract was entered into, or
29 if any material provision of the agreement was unreasonable,
30 when compared to contracts negotiated under similar
31 conditions. Any relief in this form provided by the court

1 shall be limited to the life of the receivership, unless
2 otherwise determined by the court.

3 (b) If the receiver is in possession of real estate or
4 goods subject to a lease, mortgage, or security interest which
5 the receiver has obtained a court order to avoid under
6 paragraph (a), and if the real estate or goods are necessary
7 for the continued operation of the facility under this
8 section, the receiver may apply to the court to set a
9 reasonable rental, price, or rate of interest to be paid by
10 the receiver during the duration of the receivership. The
11 court shall hold a hearing on the application within 15 days.
12 The receiver shall send notice of the application to any known
13 persons who own the property involved or to the mortgage
14 holders at least 10 days prior to the hearing. The payment by
15 the receiver of the amount determined by the court to be
16 reasonable is a defense to any action brought against the
17 receiver by any person who received such notice, which action
18 is for payment or for possession of the goods or real estate
19 subject to the lease, mortgage, or security interest involved;
20 but the payment does not relieve the owner of the facility of
21 any liability for the difference between the amount paid by
22 the receiver and the amount due under the original lease,
23 mortgage, or security interest involved.

24 (9) The court shall set the compensation of the
25 receiver, which shall be considered a necessary expense of the
26 receivership.

27 (10) The court may require a receiver to post a bond.

28 (11) A receiver may be held liable in a personal
29 capacity only for the receiver's own gross negligence,
30 intentional acts, or breach of fiduciary duty.

31 (12) The court may terminate a receivership when:

1 (a) The court determines that the receivership is no
2 longer necessary because the conditions that gave rise to the
3 receivership no longer exist; or

4 (b) All of the residents in the facility have been
5 transferred or discharged.

6 (13) Within 30 days after termination of the
7 receivership, unless this time period is extended by the
8 court, the receiver shall give the court a complete accounting
9 of all property of which the receiver has taken possession, of
10 all funds collected and disbursed, and of the expenses of the
11 receivership.

12 (14) This section does not relieve any owner,
13 operator, or employee of a facility placed in receivership of
14 any civil or criminal liability incurred, or any duty imposed
15 by law, by reason of acts or omissions of the owner, operator,
16 or employee before the appointment of a receiver, and this
17 section does not suspend during the receivership any
18 obligation of the owner, operator, or employee for payment of
19 taxes or other operating and maintenance expenses of the
20 facility or any obligation of the owner, operator, or employee
21 or any other person for the payment of mortgages or liens. The
22 owner shall retain the right to sell or mortgage any facility
23 under receivership, subject to the approval of the court that
24 ordered the receivership. A receivership imposed under this
25 section is subject to the Resident Protection Trust Fund
26 pursuant to s. 400.063. The owner of a facility placed in
27 receivership by the court is liable for all expenses and costs
28 incurred by the Resident Protection Trust Fund which occur as
29 a result of the receivership.

30 400.967 Rules and classification of deficiencies.--
31

1 (1) It is the intent of the Legislature that rules
2 adopted and enforced under this part include criteria by which
3 a reasonable and consistent quality of resident care may be
4 ensured, the results of such resident care can be
5 demonstrated, and safe and sanitary facilities can be
6 provided.

7 (2) Pursuant to the intention of the Legislature, the
8 agency, in consultation with the Department of Children and
9 Family Services and the Department of Elderly Affairs, shall
10 adopt and enforce rules to administer this part, which shall
11 include reasonable and fair criteria governing:

12 (a) The location and construction of the facility;
13 including fire and life safety, plumbing, heating, cooling,
14 lighting, ventilation, and other housing conditions that will
15 ensure the health, safety, and comfort of residents. The
16 agency shall establish standards for facilities and equipment
17 to increase the extent to which new facilities and a new wing
18 or floor added to an existing facility after July 1, 2000, are
19 structurally capable of serving as shelters only for
20 residents, staff, and families of residents and staff, and
21 equipped to be self-supporting during and immediately
22 following disasters. The Agency for Health Care Administration
23 shall work with facilities licensed under this part and report
24 to the Governor and the Legislature by April 1, 2000, its
25 recommendations for cost-effective renovation standards to be
26 applied to existing facilities. In making such rules, the
27 agency shall be guided by criteria recommended by nationally
28 recognized, reputable professional groups and associations
29 having knowledge concerning such subject matters. The agency
30 shall update or revise such criteria as the need arises. All
31 facilities must comply with those lifesafety code requirements

1 and building code standards applicable at the time of approval
2 of their construction plans. The agency may require
3 alterations to a building if it determines that an existing
4 condition constitutes a distinct hazard to life, health, or
5 safety. The agency shall adopt fair and reasonable rules
6 setting forth conditions under which existing facilities
7 undergoing additions, alterations, conversions, renovations,
8 or repairs are required to comply with the most recent updated
9 or revised standards.

10 (b) The number and qualifications of all personnel,
11 including management, medical nursing, and other personnel,
12 having responsibility for any part of the care given to
13 residents.

14 (c) All sanitary conditions within the facility and
15 its surroundings, including water supply, sewage disposal,
16 food handling, and general hygiene, which will ensure the
17 health and comfort of residents.

18 (d) The equipment essential to the health and welfare
19 of the residents.

20 (e) A uniform accounting system.

21 (f) The care, treatment, and maintenance of residents
22 and measurement of the quality and adequacy thereof.

23 (g) The preparation and annual update of a
24 comprehensive emergency management plan. The agency shall
25 adopt rules establishing minimum criteria for the plan after
26 consultation with the Department of Community Affairs. At a
27 minimum, the rules must provide for plan components that
28 address emergency evacuation transportation; adequate
29 sheltering arrangements; postdisaster activities, including
30 emergency power, food, and water; postdisaster transportation;
31 supplies; staffing; emergency equipment; individual

1 identification of residents and transfer of records; and
2 responding to family inquiries. The comprehensive emergency
3 management plan is subject to review and approval by the local
4 emergency management agency. During its review, the local
5 emergency management agency shall ensure that the following
6 agencies, at a minimum, are given the opportunity to review
7 the plan: the Department of Elderly Affairs, the Department of
8 Children and Family Services, the Agency for Health Care
9 Administration, and the Department of Community Affairs. Also,
10 appropriate volunteer organizations must be given the
11 opportunity to review the plan. The local emergency management
12 agency shall complete its review within 60 days and either
13 approve the plan or advise the facility of necessary
14 revisions.

15 (h) Each licensee shall post its license in a
16 prominent place that is in clear and unobstructed public view
17 at or near the place where residents are being admitted to the
18 facility.

19 (3) The agency shall adopt rules to provide that, when
20 the criteria established under subsection (2) are not met,
21 such deficiencies shall be classified according to the nature
22 of the deficiency. The agency shall indicate the
23 classification on the face of the notice of deficiencies as
24 follows:

25 (a) Class I deficiencies are those which the agency
26 determines present and imminent danger to the residents or
27 guests of the facility or a substantial probability that death
28 or serious physical harm would result therefrom. The condition
29 or practice constituting a class I violation must be abated or
30 eliminated immediately, unless a fixed period of time, as
31 determined by the agency, is required for correction.

1 Notwithstanding s 400.121(2), a class I deficiency is subject
2 to a civil penalty in an amount not less than \$5,000 and not
3 exceeding \$10,000 for each deficiency. A fine may be levied
4 notwithstanding the correction of the deficiency.

5 (b) Class II deficiencies are those which the agency
6 determines have a direct or immediate relationship to the
7 health, safety, or security of the facility residents, other
8 than class I deficiencies. A class II deficiency is subject to
9 a civil penalty in an amount not less than \$1,000 and not
10 exceeding \$5,000 for each deficiency. A citation for a class
11 II deficiency shall specify the time within which the
12 deficiency must be corrected. If a class II deficiency is
13 corrected within the time specified, no civil penalty shall be
14 imposed, unless it is a repeated offense.

15 (c) Class III deficiencies are those which the agency
16 determines to have an indirect or potential relationship to
17 the health, safety, or security of the facility residents,
18 other than class I or class II deficiencies. A class III
19 deficiency is subject to a civil penalty of not less than \$500
20 and not exceeding \$1,000 for each deficiency. A citation for a
21 class III deficiency shall specify the time within which the
22 deficiency must be corrected. If a class III deficiency is
23 corrected within the time specified, no civil penalty shall be
24 imposed, unless it is a repeated offense.

25 (4) Civil penalties paid by any licensee under
26 subsection (3) shall be deposited in the Health Care Trust
27 Fund and expended as provided in s. 400.063.

28 (5) The agency shall approve or disapprove the plans
29 and specifications within 60 days after receipt of the final
30 plans and specifications. The agency may be granted one 15-day
31 extension for the review period, if the director of the agency

1 so approves. If the agency fails to act within the specified
2 time, it is deemed to have approved the plans and
3 specifications. When the agency disapproves plans and
4 specifications, it must set forth in writing the reasons for
5 disapproval. Conferences and consultations may be provided as
6 necessary.

7 (6) The agency may charge an initial fee of \$2,000 for
8 review of plans and construction on all projects, no part of
9 which is refundable. The agency may also collect a fee, not to
10 exceed 1 percent of the estimated construction cost or the
11 actual cost of review, whichever is less, for the portion of
12 the review which encompasses initial review through the
13 initial revised construction document review. The agency may
14 collect its actual costs on all subsequent portions of the
15 review and construction inspections. Initial fee payment must
16 accompany the initial submission of plans and specification.
17 Any subsequent payment that is due is payable upon receipt of
18 the invoice from the agency. Notwithstanding any other
19 provision of law, all money received by the agency under this
20 section shall be deemed to be trust funds, to be held and
21 applied solely for the operations required under this section.

22 400.968 Right of entry; protection of health, safety,
23 and welfare.--

24 (1) Any designated officer or employee of the agency,
25 of the state, or of the local fire marshal may enter
26 unannounced the premises of any facility licensed under this
27 part in order to determine the state of compliance with this
28 part and the rules or standards in force under this part. The
29 right of entry and inspection also extends to any premises
30 that the agency has reason to believe are being operated or
31 maintained as a facility without a license; but such an entry

1 or inspection may not be made without the permission of the
2 owner or person in charge of the facility unless a warrant
3 that authorizes the entry is first obtained from the circuit
4 court. The warrant requirement extends only to a facility that
5 the agency has reason to believe is being operated or
6 maintained as a facility without a license. An application for
7 a license or renewal thereof which is made under this section
8 constitutes permission for, and acquiescence in, any entry or
9 inspection of the premises for which the license is sought, in
10 order to facilitate verification of the information submitted
11 in connection with the application; to discover, investigate,
12 and determine the existence of abuse or neglect; or to elicit,
13 receive, respond to, and resolve complaints. A current valid
14 license constitutes unconditional permission for, and
15 acquiescence in, any entry or inspection of the premises by
16 authorized personnel. The agency retains the right of entry
17 and inspection of facilities that have had a license revoked
18 or suspended within the previous 24 months, to ensure that the
19 facility is not operating unlawfully. However, before the
20 facility is entered, a statement of probable cause must be
21 filed with the director of the agency, who must approve or
22 disapprove the action within 48 hours.

23 (2) The agency may institute injunctive proceedings in
24 a court of competent jurisdiction for temporary or permanent
25 relief to:

26 (a) Enforce this section or any minimum standard,
27 rule, or order issued pursuant thereto if the agency's effort
28 to correct a violation through administrative fines has failed
29 or when the violation materially affects the health, safety,
30 or welfare of residents; or

31

1 (b) Terminate the operation of a facility if a
2 violation of this section or of any standard or rule adopted
3 pursuant thereto exists which materially affects the health,
4 safety, or welfare of residents.

5
6 The Legislature recognizes that, in some instances, action is
7 necessary to protect residents of facilities from immediately
8 life-threatening situations. If it appears by competent
9 evidence or a sworn, substantiated affidavit that a temporary
10 injunction should issue, the court, pending the determination
11 on final hearing, shall enjoin operation of the facility.

12 (3) The agency may impose an immediate moratorium on
13 admissions to a facility when the agency determines that any
14 condition in the facility presents a threat to the health,
15 safety, or welfare of the residents in the facility. If a
16 facility's license is denied, revoked, or suspended, the
17 facility may be subject to the immediate imposition of a
18 moratorium on admissions to run concurrently with licensure
19 denial, revocation, or suspension.

20 (4)(a) A violation of any provision of this section or
21 rules adopted by the agency under this section is punishable
22 by payment of an administrative or civil penalty not to exceed
23 \$5,000.

24 (b) A violation of this section or of rules adopted
25 under this section is a misdemeanor of the first degree,
26 punishable as provided in s. 775.082 or s. 775.083. Each day
27 of a continuing violation is a separate offense.

28 Section 10. From the lump sum appropriated for
29 developmental services in the 1999-2000 General Appropriations
30 Act, the Department of Children and Family Services shall
31 design a system of providing services for persons with

1 developmental disabilities which provides a consumer-directed,
2 choice-based system. The department shall institute at least
3 one, but not more than three, differently structured pilot
4 programs to test a payment model in which the consumer
5 controls the money that is available for his or her care. The
6 department shall report its progress under this section to the
7 appropriate legislative committees by December 1, 2000, and
8 December 1, 2001. This section is repealed July 1, 2002, and
9 shall be reviewed by the Legislature prior to that date.

10 Section 11. This act shall take effect upon becoming a
11 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2214

4 States that the Department of Children and Family Services
5 will assess the level of need and medical necessity for
6 prospective residents of intermediate care facilities for the
7 developmentally disabled after October 1, 1999, and may enter
8 into an agreement with the Department of Elderly Affairs for
9 the Department of Elder Affairs' Comprehensive Assessment and
10 Review for Long-Term Care Services (CARES) program to conduct
11 these assessments.

12 Increases the administrative fines for facilities licensed
13 under chapter 393, F.S., from \$500 to \$1,000 per violation per
14 day.

15 Specifies that the Governor may direct the Agency for Health
16 Care Administration to amend the Medicaid State Plan by
17 deleting the optional Medicaid service known as "Intermediate
18 Care Facilities for the Developmentally Disabled" if it is
19 necessary to safeguard the state's systems of providing
20 services to elderly and disabled persons and consistent with
21 the notice and review provisions of s. 216.177, F.S.

22 Includes services to disabled persons to the preauthorization
23 and concurrent utilization review process and the conflict of
24 interest standards developed and enforced by the Agency for
25 Health Care Administration.

26 Creates the statutory authority for the licensure of
27 Intermediate Care Facilities for the Developmentally Disabled.

28 Specifies that if a sufficient number of persons move from an
29 institution that serves persons with developmental
30 disabilities resulting in the closure of an entire residential
31 unit, no less than 80 percent of the direct service costs
associated with the operation of that unit must be transferred
from institutional care to community-based services.

Directs the Department of Children and Family Services to use
the lump sum appropriated for developmental services in the
General Appropriations Act for FY 1999-2000 to design a system
of providing services for persons with developmental
disabilities that is consumer-directed and choice-based and to
institute not more than three pilot programs to test this
payment model.

Requires that the Department of Children and Family Services
submit a report on the progress of the consumer-directed pilot
programs to the appropriate legislative committees by December
1, 2000, and by December 1, 2001.