

By the Committee on Health & Human Services Appropriations  
and Representatives Sanderson, Hafner, Murman and Farkas

1                                   A bill to be entitled  
2           An act relating to services for persons with  
3           developmental disabilities; amending s.  
4           393.062, F.S.; providing legislative intent on  
5           eligibility criteria for intermediate care  
6           facilities for the developmentally disabled  
7           contained in the state Medicaid plan; amending  
8           s. 393.065, F.S.; providing for assessment of  
9           the level of need and medical necessity for  
10          prospective residents of such facilities after  
11          a specified date; providing for an interagency  
12          agreement to conduct assessments to determine  
13          the level of need and medical necessity for  
14          long-term care services; providing for funding  
15          of such assessments; restricting reimbursement  
16          to those admissions approved pursuant to such  
17          assessments; amending s. 409.9127, F.S.;  
18          applying provisions relating to  
19          preauthorization and concurrent utilization  
20          review to direct-service organizations that  
21          provide developmental services; requiring the  
22          Agency for Health Care Administration to assist  
23          the Department of Children and Family Services  
24          with such assessment duties; amending s.  
25          393.22, F.S.; providing for transfer of a  
26          portion of designated funds to community  
27          services under certain circumstances; amending  
28          s. 393.0673, F.S.; increasing the amount of  
29          certain administrative fines the Department of  
30          Children and Family Services may impose;  
31          amending s. 409.906, F.S.; authorizing deletion

1 from the state Medicaid plan of the optional  
2 Intermediate Care Facility for the  
3 Developmentally Disabled service under certain  
4 circumstances; amending s. 409.908, F.S.,  
5 relating to reimbursement of Medicaid  
6 providers; revising a reference to intermediate  
7 care facilities for the developmentally  
8 disabled for purposes of reimbursement;  
9 eliminating authority for certain facilities to  
10 participate in the developmental services  
11 waiver; creating part X of chapter 400, F.S.;  
12 providing definitions; requiring the licensure  
13 of intermediate care facilities for the  
14 developmentally disabled; providing  
15 requirements for license applications;  
16 providing requirements for background  
17 screening; providing for provisional licensure;  
18 providing for license renewal; providing for  
19 license fees; authorizing the Agency for Health  
20 Care Administration to institute injunctive  
21 proceedings to enforce the part; providing for  
22 personnel screening; specifying grounds under  
23 which the agency may take action against a  
24 licensee; authorizing the agency to institute  
25 receivership proceedings; providing rulemaking  
26 authority; providing for the classification of  
27 deficiencies; providing civil penalties;  
28 providing for the approval of plans and  
29 specifications and fees therefor; providing for  
30 certain officers of the agency, the state, and  
31 the local fire marshal to have a right to enter

1 a licensed facility; providing for a moratorium  
2 on admissions to a facility; providing  
3 penalties; providing for redesigning of the  
4 system of providing services for persons with  
5 developmental disabilities to provide a  
6 consumer-directed, choice-based system;  
7 providing for pilot programs for such purpose;  
8 requiring progress reports; providing for  
9 future review and repeal; providing an  
10 effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

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

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

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

1 that all caretakers unrelated to individuals with  
2 developmental disabilities receiving care shall be of good  
3 moral character.

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

7 393.065 Application and eligibility determination.--

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

22 (4) The department shall assess the level of need and  
23 medical necessity for prospective residents of intermediate  
24 care facilities for the developmentally disabled after October  
25 1, 1999. The department may enter into an agreement with the  
26 Department of Elderly Affairs for the Department of Elderly  
27 Affairs' Comprehensive Assessment and Review for Long-Term  
28 Care Services (CARES) Program to conduct such assessments to  
29 determine the level of need and medical necessity for  
30 intermediate care facilities for the developmentally disabled  
31 under the state Medicaid plan. To the extent permissible under

1 federal law, the assessments shall be funded under Title XIX  
2 of the Social Security Act. Only admissions approved pursuant  
3 to such assessments are eligible for reimbursement under  
4 chapter 409.

5 Section 3. Section 409.9127, Florida Statutes, is  
6 amended to read:

7 409.9127 Preauthorization and concurrent utilization  
8 review; conflict-of-interest standards.--

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

25 (2) Vendors selected to conduct preauthorization or  
26 concurrent utilization review management, or both, may be  
27 peer-review organizations, qualified licensed clinical  
28 practitioners, or public or private organizations that  
29 demonstrate the ability to conduct such reviews according to  
30 criteria developed by the agency and that have no financial or  
31 other conflict of interest with any direct-service

1 organization providing developmental services or ~~alcohol~~,  
2 substance abuse, mental health, or related services. Selection  
3 of vendors shall be accomplished through a competitive  
4 process.

5 (3) The agency shall help the Department of Children  
6 and Family Services meet the requirements of s. 393.065(4).

7 Section 4. Subsection (4) is added to section 393.22,  
8 Florida Statutes, to read:

9 393.22 Transfer of appropriations; barriers to  
10 services; financial commitment to programs.--

11 (4) The Department of Children and Family Services and  
12 the Agency for Health Care Administration jointly shall ensure  
13 that whenever enough persons move from an institution serving  
14 persons with developmental disabilities to allow an entire  
15 residential unit within that institution to be closed, no less  
16 than 80 percent of the direct costs of providing services to  
17 persons who had resided in that unit shall be transferred to  
18 community services.

19 Section 5. Subsections (1) and (2) of section  
20 393.0673, Florida Statutes, are amended to read:

21 393.0673 Denial, suspension, revocation of license;  
22 moratorium on admissions; administrative fines; procedures.--

23 (1) The Department of Children and Family ~~Health and~~  
24 ~~Rehabilitative~~ Services may deny, revoke, or suspend a license  
25 or impose an administrative fine, not to exceed ~~\$1,000~~ \$500  
26 per violation per day, for a violation of any provision of s.  
27 393.0655 or s. 393.067 or rules adopted ~~promulgated~~ pursuant  
28 thereto. All hearings shall be held within the county in which  
29 the licensee or applicant operates or applies for a license to  
30 operate a facility as defined herein.

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

11           Section 6. Subsection (15) of section 409.906, Florida  
12 Statutes, 1998 Supplement, is amended to read:

13           409.906 Optional Medicaid services.--Subject to  
14 specific appropriations, the agency may make payments for  
15 services which are optional to the state under Title XIX of  
16 the Social Security Act and are furnished by Medicaid  
17 providers to recipients who are determined to be eligible on  
18 the dates on which the services were provided. Any optional  
19 service that is provided shall be provided only when medically  
20 necessary and in accordance with state and federal law.  
21 Nothing in this section shall be construed to prevent or limit  
22 the agency from adjusting fees, reimbursement rates, lengths  
23 of stay, number of visits, or number of services, or making  
24 any other adjustments necessary to comply with the  
25 availability of moneys and any limitations or directions  
26 provided for in the General Appropriations Act or chapter 216.  
27 Optional services may include:

28           (15) INTERMEDIATE CARE FACILITY FOR THE  
29 DEVELOPMENTALLY DISABLED SERVICES.--~~For the purposes of~~  
30 ~~Medicaid reimbursement, "intermediate care facility for the~~  
31 ~~developmentally disabled services" means services provided by~~



1 ~~a facility which is owned and operated by the state and to~~  
2 ~~which~~ The agency may pay for health-related care and services  
3 provided on a 24-hour-a-day basis by a facility licensed and  
4 certified as a Medicaid Intermediate Care Facility for the  
5 Developmentally Disabled, for a recipient who needs such care  
6 because of a developmental disability ~~or related condition~~. If  
7 necessary to safeguard the state's system of providing  
8 services to elderly and disabled persons and subject to the  
9 notice and review provisions of s. 216.177, the Governor may  
10 direct the agency to amend the state Medicaid plan to delete  
11 this service.

12 Section 7. Paragraph (a) of subsection (2) and  
13 subsection (8) of section 409.908, Florida Statutes, 1998  
14 Supplement, are amended to read:

15 409.908 Reimbursement of Medicaid providers.--Subject  
16 to specific appropriations, the agency shall reimburse  
17 Medicaid providers, in accordance with state and federal law,  
18 according to methodologies set forth in the rules of the  
19 agency and in policy manuals and handbooks incorporated by  
20 reference therein. These methodologies may include fee  
21 schedules, reimbursement methods based on cost reporting,  
22 negotiated fees, competitive bidding pursuant to s. 287.057,  
23 and other mechanisms the agency considers efficient and  
24 effective for purchasing services or goods on behalf of  
25 recipients. Payment for Medicaid compensable services made on  
26 behalf of Medicaid eligible persons is subject to the  
27 availability of moneys and any limitations or directions  
28 provided for in the General Appropriations Act or chapter 216.  
29 Further, nothing in this section shall be construed to prevent  
30 or limit the agency from adjusting fees, reimbursement rates,  
31 lengths of stay, number of visits, or number of services, or

1 making any other adjustments necessary to comply with the  
2 availability of moneys and any limitations or directions  
3 provided for in the General Appropriations Act, provided the  
4 adjustment is consistent with legislative intent.

5 (2)(a)1. Reimbursement to nursing homes licensed under  
6 part II of chapter 400 and ~~state-owned-and-operated~~  
7 intermediate care facilities for the developmentally disabled  
8 licensed under chapter 393 must be made prospectively.

9 2. Unless otherwise limited or directed in the General  
10 Appropriations Act, reimbursement to hospitals licensed under  
11 part I of chapter 395 for the provision of swing-bed nursing  
12 home services must be made on the basis of the average  
13 statewide nursing home payment, and reimbursement to a  
14 hospital licensed under part I of chapter 395 for the  
15 provision of skilled nursing services must be made on the  
16 basis of the average nursing home payment for those services  
17 in the county in which the hospital is located. When a  
18 hospital is located in a county that does not have any  
19 community nursing homes, reimbursement must be determined by  
20 averaging the nursing home payments, in counties that surround  
21 the county in which the hospital is located. Reimbursement to  
22 hospitals, including Medicaid payment of Medicare copayments,  
23 for skilled nursing services shall be limited to 30 days,  
24 unless a prior authorization has been obtained from the  
25 agency. Medicaid reimbursement may be extended by the agency  
26 beyond 30 days, and approval must be based upon verification  
27 by the patient's physician that the patient requires  
28 short-term rehabilitative and recuperative services only, in  
29 which case an extension of no more than 15 days may be  
30 approved. Reimbursement to a hospital licensed under part I of  
31 chapter 395 for the temporary provision of skilled nursing

1 services to nursing home residents who have been displaced as  
2 the result of a natural disaster or other emergency may not  
3 exceed the average county nursing home payment for those  
4 services in the county in which the hospital is located and is  
5 limited to the period of time which the agency considers  
6 necessary for continued placement of the nursing home  
7 residents in the hospital.

8 (8) A provider of home-based or community-based  
9 services rendered pursuant to a federally approved waiver  
10 shall be reimbursed based on an established or negotiated rate  
11 for each service. These rates shall be established according  
12 to an analysis of the expenditure history and prospective  
13 budget developed by each contract provider participating in  
14 the waiver program, or under any other methodology adopted by  
15 the agency and approved by the Federal Government in  
16 accordance with the waiver. ~~Effective July 1, 1996, privately~~  
17 ~~owned and operated community-based residential facilities~~  
18 ~~which meet agency requirements and which formerly received~~  
19 ~~Medicaid reimbursement for the optional intermediate care~~  
20 ~~facility for the mentally retarded service may participate in~~  
21 ~~the developmental services waiver as part of a~~  
22 ~~home-and-community-based continuum of care for Medicaid~~  
23 ~~recipients who receive waiver services.~~

24 Section 8. Part X of chapter 400, Florida Statutes,  
25 consisting of sections 400.961, 400.962, 400.963, 400.964,  
26 400.965, 400.966, 400.967, and 400.968, Florida Statutes, is  
27 created to read:

28 400.961 Definitions.--As used in this part, the term:

29 (1) "Active treatment" means the provision of services  
30 by an interdisciplinary team which are necessary to maximize a

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1 client's individual independence or prevent regression or loss  
2 of functional status.

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

5 (3) "Autism" means a pervasive, neurologically based  
6 developmental disability of extended duration which causes  
7 severe learning, communication, and behavior disorders with  
8 age of onset during infancy or childhood. Individuals with  
9 autism exhibit impairment in reciprocal social interaction,  
10 impairment in verbal and nonverbal communication and  
11 imaginative ability, and a markedly restricted repertoire of  
12 activities and interests.

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

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

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

26 (7) "Department" means the Department of Children and  
27 Family Services.

28 (8) "Developmental disability" means a disorder or  
29 syndrome that is attributable to retardation, cerebral palsy,  
30 autism, spina bifida, or Prader-Willi syndrome and that  
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1 constitutes a substantial handicap that can reasonably be  
2 expected to continue indefinitely.

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

7 (10) "Epilepsy" means a chronic brain disorder of  
8 various causes which is characterized by recurrent seizures  
9 due to excessive discharge of cerebral neurons. When found  
10 concurrently with retardation, autism, or cerebral palsy,  
11 epilepsy is considered a secondary disability for which the  
12 client is eligible to receive services to ameliorate this  
13 condition according to the provisions of this part.

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

19 (12) "Intermediate care facility for the  
20 developmentally disabled" means a residential facility  
21 licensed and certified in accordance with state law, and  
22 certified by the Federal Government, pursuant to the Social  
23 Security Act, as a provider of Medicaid services to persons  
24 who are developmentally disabled.

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

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1       (14) "Retardation" means significantly subaverage  
2 general intellectual functioning existing concurrently with  
3 deficits in adaptive behavior and manifested during the period  
4 from conception to age 18. "Significantly subaverage general  
5 intellectual functioning," for the purpose of this definition,  
6 means performance that is two or more standard deviations from  
7 the mean score on a standardized intelligence test specified  
8 in rules of the department. "Deficits in adaptive behavior,"  
9 for the purpose of this definition, means deficits in the  
10 effectiveness or degree with which an individual meets the  
11 standards of personal independence and social responsibility  
12 expected of his or her age, cultural group, and community.

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

15       400.962 License required; license application; license  
16 fee.--

17       (1) It is unlawful to operate an intermediate care  
18 facility for the developmentally disabled or a comprehensive  
19 transitional education program without a license.

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

24       (3) The basic license fee collected shall be deposited  
25 in the Health Care Trust Fund.

26       (4) The license must be conspicuously displayed inside  
27 the facility.

28       (5) A license is valid only in the hands of the  
29 individual, firm, partnership, association, or corporation to  
30 whom or to which it is issued. A license is not valid for any  
31 premises other than those for which it was originally issued

1 and may not be sold, assigned, or otherwise transferred,  
2 voluntarily or involuntarily.

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

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

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

17 (b) The name of any person whose name is required on  
18 the application under paragraph (a) and who owns at least a  
19 10-percent interest in any professional service, firm,  
20 association, partnership, or corporation providing goods,  
21 leases, or services to the facility for which the application  
22 is made, and the name and address of the professional service,  
23 firm, association, partnership, or corporation in which such  
24 interest is held.

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

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

30 (e) The total number of beds.

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

5       (9) The applicant must submit evidence that  
6 establishes the good moral character of the applicant,  
7 manager, supervisor, and administrator. An applicant who is an  
8 individual or a member of a board of directors or officer of  
9 an applicant that is a firm, partnership, association, or  
10 corporation must not have been convicted, or found guilty,  
11 regardless of adjudication, of a crime in any jurisdiction  
12 which affects or may potentially affect residents in the  
13 facility.

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

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

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



1 within the previous 5 years in compliance with any other  
2 health care or assisted living licensure requirements of this  
3 state satisfies the requirements of paragraph (a). Proof of  
4 compliance with background screening which has been submitted  
5 within the previous 5 years to fulfill the requirements of the  
6 Department of Insurance under chapter 651 as part of an  
7 application for a certificate of authority to operate a  
8 continuing care retirement community satisfies the  
9 requirements for the Department of Law Enforcement and Federal  
10 Bureau of Investigation background checks.

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

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

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

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

30 (11) The applicant must furnish satisfactory proof of  
31 financial ability to operate and conduct the facility in

1 accordance with the requirements of this part and all rules  
2 adopted under this part, and the agency shall establish  
3 standards for this purpose.

4 (12) The annual license fee required for each license  
5 issued under this part shall be established annually and must  
6 be reasonably calculated to cover the cost of regulation under  
7 this part. The rate per bed shall be the minimum rate per bed,  
8 and such rate shall remain in effect until the effective date  
9 of a rate per bed adopted by rule by the agency pursuant to  
10 this part. The agency may prorate the annual license fee for  
11 those licenses which it issues under this part for less than 1  
12 year. Funds generated by license fees collected in accordance  
13 with this section shall be deposited in the Health Care Trust  
14 Fund.

15 (13) 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.

19 400.963 Injunctive proceedings.--The agency may seek a  
20 temporary or permanent injunction to:

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

23 (2) Terminate the operation of a facility licensed  
24 under this part when the facility:

25 (a) Fails to take preventive or corrective measures in  
26 accordance with any order of the agency.

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

28 (c) Commits any violation creating an emergency  
29 requiring immediate action.

30 (3) Terminate the operation of a provider of supports  
31 or services who has willfully and knowingly refused to comply

1 with the screening requirement for direct service providers or  
2 has refused to terminate direct service providers found not to  
3 be in compliance with the requirements for good moral  
4 character.

5 400.964 Personnel screening requirement.--

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

12 (2) Employers and employees shall comply with the  
13 requirements of chapter 435.

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

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

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

30 (6) The agency may adopt rules to administer this  
31 section.

1       (7) All employees must comply with the requirements of  
2 this section by October 1, 2000. A person employed by a  
3 facility licensed pursuant to this part as of the effective  
4 date of this act is not required to submit to rescreening if  
5 the facility has in its possession written evidence that the  
6 person has been screened and qualified according to level 1  
7 standards as specified in s. 435.03(1). Any current employee  
8 who meets the level 1 requirement but who has not maintained  
9 continuous residency within this state for the 5 years  
10 immediately preceding the effective date of this act must  
11 provide to the employing facility written attestation under  
12 penalty of perjury that the employee has not been convicted of  
13 a disqualifying offense in another state or jurisdiction. All  
14 applicants hired on or after October 1, 1999, must comply with  
15 the requirements of this section.

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

24       400.965 Action by agency against licensee; grounds.--

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

27       (a) A misrepresentation of a material fact in the  
28 application;

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

1       (c) A violation of any provision of this part or rules  
2 adopted under this part; or  
3       (d) The commission of any act constituting a ground  
4 upon which application for a license may be denied.  
5       (2) If the agency has a reasonable belief that any of  
6 such conditions exists, it shall:  
7       (a) In the case of an applicant for original  
8 licensure, deny the application.  
9       (b) In the case of an applicant for relicensure or a  
10 current licensee, take administrative action as provided in s.  
11 400.968 or injunctive action as authorized by s. 400.963.  
12       (c) In the case of a facility operating without a  
13 license, take injunctive action as authorized by s. 400.963.  
14       400.966 Receivership proceeding.--  
15       (1) The agency may petition a court of competent  
16 jurisdiction for the appointment of a receiver for an  
17 intermediate care facility for the developmentally disabled  
18 which is owned and operated by a corporation or partnership  
19 when:  
20       (a) Any person is operating the facility without a  
21 license and refuses to apply for a license.  
22       (b) The licensee is closing the facility or has  
23 informed the agency that it intends to close the facility, and  
24 adequate arrangements have not been made to relocate the  
25 residents within 7 days, exclusive of weekends and holidays,  
26 after the closing of the facility.  
27       (c) The agency determines that conditions exist in the  
28 facility which present an imminent danger to the health,  
29 safety, or welfare of the residents of the facility or which  
30 present a substantial probability that death or serious  
31 physical harm would result therefrom. Whenever possible, the

1 agency shall facilitate the continued operation of the  
2 program.

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

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

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

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

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

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



1 the agency shall place the residents in appropriate  
2 alternative residential settings as quickly as possible. If,  
3 in the opinion of the court, the agency has not been diligent  
4 in its efforts to make adequate arrangements for placement,  
5 the court shall find the agency to be in contempt and shall  
6 order the agency to submit its plans for moving the residents.

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

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

12 (b) Shall operate the facility in such a manner as to  
13 ensure the residents' safety and adequate health care for the  
14 residents.

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

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

29 (e) May use the building, fixtures, furnishings, and  
30 any accompanying consumable goods in the provision of care and  
31 services to residents and to any other persons receiving

1 services from the facility at the time the petition for  
2 receivership was filed. The receiver shall collect payments  
3 for all goods and services provided to residents or others  
4 during the period of the receivership at the same rate of  
5 payment charged by the owner at the time the petition for  
6 receivership was filed, or at a fair and reasonable rate  
7 otherwise approved by the court for private, paying residents.  
8 The receiver may apply to the agency for a rate increase for  
9 residents under Title XIX of the Social Security Act if the  
10 facility is not receiving the state reimbursement cap and if  
11 expenditures justify an increase in the rate.

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

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

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

31

1       (i) Shall be entitled to take possession of all  
2 property or assets of residents which are in the possession of  
3 a facility or its owner. The receiver shall preserve all such  
4 property or assets and all resident records of which the  
5 receiver takes possession; and he or she shall provide for the  
6 prompt transfer of the property, assets, and records of any  
7 resident transferred to the resident's new placement. An  
8 inventory list certified by the owner and receiver must be  
9 made when the receiver takes possession of the facility.

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

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

22       (c) A payment to the receiver of any sum owned to the  
23 facility or its owner discharges any obligation to the  
24 facility to the extent of the payment.

25       (8)(a) A receiver may petition the court that he or  
26 she not be required to honor any lease, mortgage, secured  
27 transaction, or other wholly or partially executory contract  
28 entered into by the owner of the facility if the rent, price,  
29 or rate of interest required to be paid under the agreement  
30 was substantially in excess of a reasonable rent, price, or  
31 rate of interest at the time the contract was entered into, or

1 if any material provision of the agreement was unreasonable,  
2 when compared to contracts negotiated under similar  
3 conditions. Any relief in this form provided by the court  
4 shall be limited to the life of the receivership, unless  
5 otherwise determined by the court.

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

27 (9) The court shall set the compensation of the  
28 receiver, which shall be considered a necessary expense of the  
29 receivership.

30 (10) The court may require a receiver to post a bond.  
31

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

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

5       (a) The court determines that the receivership is no  
6 longer necessary because the conditions that gave rise to the  
7 receivership no longer exist; or

8       (b) All of the residents in the facility have been  
9 transferred or discharged.

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

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

1 incurred by the Resident Protection Trust Fund which occur as  
2 a result of the receivership.

3 400.967 Rules and classification of deficiencies.--

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

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

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

1 concerning such subject matters. The agency shall update or  
2 revise such criteria as the need arises. All facilities must  
3 comply with those lifesafety code requirements and building  
4 code standards applicable at the time of approval of their  
5 construction plans. The agency may require alterations to a  
6 building if it determines that an existing condition  
7 constitutes a distinct hazard to life, health, or safety. The  
8 agency shall adopt fair and reasonable rules setting forth  
9 conditions under which existing facilities undergoing  
10 additions, alterations, conversions, renovations, or repairs  
11 are required to comply with the most recent updated or revised  
12 standards.

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

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

21 (d) The equipment essential to the health and welfare  
22 of the residents.

23 (e) A uniform accounting system.

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

26 (g) The preparation and annual update of a  
27 comprehensive emergency management plan. The agency shall  
28 adopt rules establishing minimum criteria for the plan after  
29 consultation with the Department of Community Affairs. At a  
30 minimum, the rules must provide for plan components that  
31 address emergency evacuation transportation; adequate

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

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

24 (a) Class I deficiencies are those which the agency  
25 determines present an imminent danger to the residents or  
26 guests of the facility or a substantial probability that death  
27 or serious physical harm would result therefrom. The condition  
28 or practice constituting a class I violation must be abated or  
29 eliminated immediately, unless a fixed period of time, as  
30 determined by the agency, is required for correction. A class  
31 I deficiency is subject to a civil penalty in an amount not



1 less than \$5,000 and not exceeding \$10,000 for each  
2 deficiency. A fine may be levied notwithstanding the  
3 correction of the deficiency.

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

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

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

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

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

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

21 400.968 Right of entry; protection of health, safety,  
22 and welfare.--

23 (1) Any designated officer or employee of the agency,  
24 of the state, or of the local fire marshal may enter  
25 unannounced the premises of any facility licensed under this  
26 part in order to determine the state of compliance with this  
27 part and the rules or standards in force under this part. The  
28 right of entry and inspection also extends to any premises  
29 that the agency has reason to believe are being operated or  
30 maintained as a facility without a license, but such an entry  
31 or inspection may not be made without the permission of the

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

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

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

30 (b) Terminate the operation of a facility if a  
31 violation of this section or of any standard or rule adopted

1 pursuant thereto exists which materially affects the health,  
2 safety, or welfare of residents.

3  
4 The Legislature recognizes that, in some instances, action is  
5 necessary to protect residents of facilities from immediately  
6 life-threatening situations. If it appears by competent  
7 evidence or a sworn, substantiated affidavit that a temporary  
8 injunction should issue, the court, pending the determination  
9 on final hearing, shall enjoin operation of the facility.

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

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

22 (b) A violation of any provision of this section or  
23 any rule adopted by the agency under this section is a  
24 misdemeanor of the first degree, punishable as provided in s.  
25 775.082 or s. 775.083. Each day of a continuing violation is a  
26 separate offense.

27 Section 9. The Department of Children and Family  
28 Services, from funds appropriated for such purposes, shall  
29 redesign the system of providing services for persons with  
30 developmental disabilities to provide a consumer-directed,  
31 choice-based system. The department shall institute at least

1 one and no more than three differently structured pilot  
2 programs to test a consumer-directed payment model. The  
3 department shall report its progress under this section to the  
4 appropriate legislative committees by December 1, 2000, and  
5 December 1, 2001. This section is repealed on July 1, 2002,  
6 and shall be reviewed by the Legislature prior to that date.

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

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HOUSE SUMMARY

Provides legislative intent on eligibility criteria for intermediate care facilities for the developmentally disabled contained in the state Medicaid plan. Provides for assessment of the level of need and medical necessity for prospective residents of such facilities after a specified date. Provides for an interagency agreement to conduct assessments to determine the level of need and medical necessity for long-term care services and provides for funding of such assessments. Requires the Agency for Health Care Administration to assist the Department of Children and Family Services with such assessment duties. Restricts reimbursement to those admissions approved pursuant to such assessments. Applies provisions relating to preauthorization and concurrent utilization review to direct-service organizations that provide developmental services. Provides for transfer of a portion of designated funds to community services under certain circumstances. Increases the amount of certain administrative fines the Department of Children and Family Services may impose. Authorizes deletion from the state Medicaid plan of the optional Intermediate Care Facility for the Developmentally Disabled service under certain circumstances.

Creates part X of chapter 400, F.S. Provides definitions. Requires the licensure of intermediate care facilities for the developmentally disabled. Provides requirements for license applications. Provides requirements for background screening. Provides for provisional licensure. Provides for license renewal. Provides for license fees. Authorizes the Agency for Health Care Administration to institute injunctive proceedings to enforce the part. Provides for personnel screening. Specifies grounds under which the agency may take action against a licensee. Authorizes the agency to institute receivership proceedings. Provides rulemaking authority. Provides for the classification of deficiencies. Provides for the approval of plans and specifications and fees therefor. Provides for certain officers of the agency, the state, and the local fire marshal to have a right to enter a licensed facility. Provides for a moratorium on admissions to a facility. Provides penalties.

Provides for redesigning of the system of providing services for persons with developmental disabilities to provide a consumer-directed, choice-based system. Provides for pilot programs for such purpose. Requires progress reports. Provides for future review and repeal. See bill for details.