1 A bill to be entitled
2 An act relating to the Agency for Health Care
3 Administration; amending s. 409.903, F.S.;
4 revising standards for eligibility for certain
5 mandatory medical assistance; repealing s.
6 409.904(11), F.S., which provides eligibility
7 of specified persons for certain optional
8 medical assistance; amending s. 409.904, F.S.;
9 revising standards for eligibility for certain
10 optional medical assistance; amending s.
11 409.906, F.S.; revising eligibility for certain
12 Medicaid services and methods of delivering
13 services; amending s. 409.9065, F.S.;
14 prescribing additional eligibility standards
15 with respect to pharmaceutical expense
16 assistance; amending s. 409.907, F.S.;
17 authorizing withholding of Medicaid payments in
18 certain circumstances; prescribing additional
19 requirements with respect to providers'
20 submission of information; prescribing
21 additional duties for the agency with respect
22 to provider applications; amending s. 409.9116,
23 F.S.; revising the disproportionate share
24 programs for rural hospitals; eliminating
25 financial assistance program for certain rural
26 hospitals; amending s. 409.912, F.S.; revising
27 the reimbursement rate to pharmacies for
28 Medicaid prescribed drugs; amending s. 409.913,
29 F.S.; prescribing additional sanctions that may
30 be imposed upon a Medicaid provider;
31 eliminating a limit on costs that may be

1 recovered against a provider; amending s.
2 409.915, F.S.; revising the limit on a county's
3 payment for certain Medicaid costs; providing
4 that the act fulfills an important state
5 interest; amending s. 409.908, F.S.; revising
6 pharmacy dispensing fees for Medicaid drugs;
7 repealing s. 400.0225, F.S., relating to
8 consumer-satisfaction surveys; amending s.
9 400.191, F.S.; eliminating a provision relating
10 to consumer-satisfaction and
11 family-satisfaction surveys; amending s.
12 400.235, F.S.; eliminating a provision relating
13 to participation in the consumer-satisfaction
14 process; amending s. 400.071, F.S.; eliminating
15 a provision relating to participation in a
16 consumer-satisfaction-measurement process;
17 amending s. 409.815, F.S.; conforming a
18 cross-reference; providing effective dates.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Effective July 1, 2002, subsection (5) of
23 section 409.903, Florida Statutes, is amended to read:
24 409.903 Mandatory payments for eligible persons.--The
25 agency shall make payments for medical assistance and related
26 services on behalf of the following persons who the
27 department, or the Social Security Administration by contract
28 with the Department of Children and Family Services,
29 determines to be eligible, subject to the income, assets, and
30 categorical eligibility tests set forth in federal and state
31 law. Payment on behalf of these Medicaid eligible persons is

subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(5) A pregnant woman for the duration of her pregnancy and for the postpartum period as defined in federal law and rule, ~~or a child under age 1,~~ if she ~~either~~ is living in a family that has an income which is at or below 150 percent of the most current federal poverty level, or a child under age 1, if the child is living in a family ~~or, effective January 1, 1992,~~ that has an income which is at or below 185 percent of the most current federal poverty level. Such a person is not subject to an assets test. Further, a pregnant woman who applies for eligibility for the Medicaid program through a qualified Medicaid provider must be offered the opportunity, subject to federal rules, to be made presumptively eligible for the Medicaid program.

Section 2. Subsection (11) of section 409.904, Florida Statutes, is repealed.

Section 3. Effective July 1, 2002, subsections (2) and (5) of section 409.904, Florida Statutes, are amended to read:

409.904 Optional payments for eligible persons.--The agency may make payments for medical assistance and related services on behalf of the following persons who are determined to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(2)(a) A pregnant woman who would otherwise qualify for Medicaid under s. 409.903(5) except for her level of income and whose assets fall within the limits established by the Department of Children and Family Services for the

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medically needy. A pregnant woman who applies for medically needy eligibility may not be made presumptively eligible.

(b) A child under age 21 who would otherwise qualify for Medicaid or the Florida Kidcare program except for the family's level of income and whose assets fall within the limits established by the Department of Children and Family Services for the medically needy.~~A family, a pregnant woman, a child under age 18, a person age 65 or over, or a blind or disabled person who would be eligible under any group listed in s. 409.903(1), (2), or (3), except that the income or assets of such family or person exceed established limitations.~~

For a ~~family or~~ person in this group, medical expenses are deductible from income in accordance with federal requirements in order to make a determination of eligibility. A ~~family or~~ person in this group, which group is known as the "medically needy," is eligible to receive the same services as other Medicaid recipients, with the exception of services in skilled nursing facilities and intermediate care facilities for the developmentally disabled.

(5) Subject to specific federal authorization, a postpartum woman living in a family that has an income that is at or below 150 ~~185~~ percent of the most current federal poverty level is eligible for family planning services as specified in s. 409.905(3) for a period of up to 24 months following a pregnancy for which Medicaid paid for pregnancy-related services.

Section 4. Effective July 1, 2002, subsections (1), (12), and (23) of section 409.906, Florida Statutes, are amended to read:

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 Optional services rendered by providers in mobile units to
10 Medicaid recipients may be restricted or prohibited by the
11 agency. Nothing in this section shall be construed to prevent
12 or limit the agency from adjusting fees, reimbursement rates,
13 lengths of stay, number of visits, or number of services, or
14 making any other adjustments necessary to comply with the
15 availability of moneys and any limitations or directions
16 provided for in the General Appropriations Act or chapter 216.
17 If necessary to safeguard the state's systems of providing
18 services to elderly and disabled persons and subject to the
19 notice and review provisions of s. 216.177, the Governor may
20 direct the Agency for Health Care Administration to amend the
21 Medicaid state plan to delete the optional Medicaid service
22 known as "Intermediate Care Facilities for the Developmentally
23 Disabled." Optional services may include:
24 (1) ADULT DENTURE SERVICES.--The agency may pay for
25 dentures, the procedures required to seat dentures, and the
26 repair and reline of dentures, provided by or under the
27 direction of a licensed dentist, for a recipient who is age 21
28 or older. However, Medicaid will not provide reimbursement for
29 dental services provided in a mobile dental unit, except for a
30 mobile dental unit:
31

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(a) Owned by, operated by, or having a contractual agreement with the Department of Health and complying with Medicaid's county health department clinic services program specifications as a county health department clinic services provider.

(b) Owned by, operated by, or having a contractual arrangement with a federally qualified health center and complying with Medicaid's federally qualified health center specifications as a federally qualified health center provider.

(c) Rendering dental services to Medicaid recipients, 21 years of age and older, at nursing facilities.

(d) Owned by, operated by, or having a contractual agreement with a state-approved dental educational institution.

(e) This subsection is repealed July 1, 2002.

(12) CHILDREN'S HEARING SERVICES.--The agency may pay for hearing and related services, including hearing evaluations, hearing aid devices, dispensing of the hearing aid, and related repairs, if provided to a recipient under age 21 by a licensed hearing aid specialist, otolaryngologist, otologist, audiologist, or physician.

(23) CHILDREN'S VISUAL SERVICES.--The agency may pay for visual examinations, eyeglasses, and eyeglass repairs for a recipient under age 21, if they are prescribed by a licensed physician specializing in diseases of the eye or by a licensed optometrist.

Section 5. Subsection (20) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.--Subject to specific appropriations, the agency may make payments for

1 services which are optional to the state under Title XIX of
2 the Social Security Act and are furnished by Medicaid
3 providers to recipients who are determined to be eligible on
4 the dates on which the services were provided. Any optional
5 service that is provided shall be provided only when medically
6 necessary and in accordance with state and federal law.
7 Optional services rendered by providers in mobile units to
8 Medicaid recipients may be restricted or prohibited by the
9 agency. Nothing in this section shall be construed to prevent
10 or limit the agency from adjusting fees, reimbursement rates,
11 lengths of stay, number of visits, or number of services, or
12 making 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 (20) PRESCRIBED DRUG SERVICES.--The agency may pay for
23 medications that are prescribed for a recipient by a physician
24 or other licensed practitioner of the healing arts authorized
25 to prescribe medications and that are dispensed to the
26 recipient by a licensed pharmacist or physician in accordance
27 with applicable state and federal law. The agency may use
28 mail-order pharmacy services for dispensing drugs. For adults
29 eligible through the medically needy program, pharmacies must
30 dispense a generic drug for a product prescribed for a
31

beneficiary if a generic product exists for the product prescribed.

Section 6. Subsections (3) and (5) of section 409.9065, Florida Statutes, are amended to read:

409.9065 Pharmaceutical expense assistance.--

(3) BENEFITS.--Medications covered under the pharmaceutical expense assistance program are those covered under the Medicaid program in s. 409.906(19)~~s. 409.906(20)~~. Monthly benefit payments shall be limited to $80 per program participant. Participants are required to make a 10-percent coinsurance payment for each prescription purchased through this program.

(5) NONENTITLEMENT.--The pharmaceutical expense assistance program established by this section is not an entitlement. Enrollment levels are limited to those authorized by the Legislature in the annual General Appropriations Act. If funds are insufficient to serve all individuals eligible under subsection (2) and seeking coverage, the agency may develop a waiting list based on application dates to use in enrolling individuals in unfilled enrollment slots.

Section 7. Effective upon this act becoming a law, paragraph (a) of subsection (5) and subsections (7) and (9) of section 409.907, Florida Statutes, are amended to read:

409.907 Medicaid provider agreements.--The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to

1 discrimination under any program or activity for which the
2 provider receives payment from the agency.
3 (5) The agency:
4 (a) Is required to make timely payment at the
5 established rate for services or goods furnished to a
6 recipient by the provider upon receipt of a properly completed
7 claim form. The claim form shall require certification that
8 the services or goods have been completely furnished to the
9 recipient and that, with the exception of those services or
10 goods specified by the agency, the amount billed does not
11 exceed the provider's usual and customary charge for the same
12 services or goods. When a provider is under an active fraud or
13 abuse investigation by the agency, the agency may withhold
14 payment to that provider for any pending claim until the
15 conclusion of the investigation. When exercising the
16 provisions of this paragraph, the agency must timely complete
17 its investigation.
18 (7) The agency may require, as a condition of
19 participating in the Medicaid program and before entering into
20 the provider agreement, that the provider submit information,
21 in an initial and any required renewal applications,
22 concerning the professional, business, and personal background
23 of the provider and permit an onsite inspection of the
24 provider's service location by agency staff or other personnel
25 designated by the agency to perform this function. Before
26 entering into the provider agreement, or as a condition of
27 continuing participation in the Medicaid program, the agency
28 may also require that Medicaid providers reimbursed on a
29 fee-for-services basis or fee schedule basis which is not
30 cost-based, post a surety bond not to exceed $50,000 or the
31 total amount billed by the provider to the program during the

1 current or most recent calendar year, whichever is greater.
2 For new providers, the amount of the surety bond shall be
3 determined by the agency based on the provider's estimate of
4 its first year's billing. If the provider's billing during the
5 first year exceeds the bond amount, the agency may require the
6 provider to acquire an additional bond equal to the actual
7 billing level of the provider. A provider's bond shall not
8 exceed $50,000 if a physician or group of physicians licensed
9 under chapter 458, chapter 459, or chapter 460 has a 50
10 percent or greater ownership interest in the provider or if
11 the provider is an assisted living facility licensed under
12 part III of chapter 400. The bonds permitted by this section
13 are in addition to the bonds referenced in s. 400.179(4)(d).
14 If the provider is a corporation, partnership, association, or
15 other entity, the agency may require the provider to submit
16 information concerning the background of that entity and of
17 any principal of the entity, including any partner or
18 shareholder having an ownership interest in the entity equal
19 to 5 percent or greater, and any treating provider who
20 participates in or intends to participate in Medicaid through
21 the entity. The information must include:
22 (a) Proof of holding a valid license or operating
23 certificate, as applicable, if required by the state or local
24 jurisdiction in which the provider is located or if required
25 by the Federal Government.
26 (b) Information concerning any prior violation, fine,
27 suspension, termination, or other administrative action taken
28 under the Medicaid laws, rules, or regulations of this state
29 or of any other state or the Federal Government; any prior
30 violation of the laws, rules, or regulations relating to the
31 Medicare program; any prior violation of the rules or

regulations of any other public or private insurer; and any prior violation of the laws, rules, or regulations of any regulatory body of this or any other state.

(c) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(d) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(9) Upon receipt of a completed, signed, and dated application, and completion of any necessary background investigation and criminal history record check, the agency must either:

(a) Enroll the applicant as a Medicaid provider no earlier than the effective date of the approval of the provider application; or

(b) Deny the application if the agency finds that it is in the best interest of the Medicaid program to do so. The agency may consider the factors listed in subsection (10), as well as any other factor that could affect the effective and efficient administration of the program, including, but not limited to, the current availability of medical care, services, or supplies to recipients, taking into account geographic location and reasonable travel time; the number of providers of the same type already enrolled in the same geographic area; and the credentials, experience, success, and patient outcomes of the provider for the services that it is making application to provide in the Medicaid program.

Section 8. Section 409.9116, Florida Statutes, is amended to read:

409.9116 Disproportionate share ~~share/financial assistance~~ program for rural hospitals.--In addition to the payments made under s. 409.911, the Agency for Health Care Administration shall administer a federally matched disproportionate share program ~~and a state-funded financial assistance program~~ for statutory rural hospitals. The agency shall make disproportionate share payments to statutory rural hospitals that qualify for such payments ~~and financial assistance payments to statutory rural hospitals that do not qualify for disproportionate share payments~~. The disproportionate share program payments shall be limited by and conform with federal requirements. Funds shall be distributed quarterly in each fiscal year for which an appropriation is made. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate in the rural hospital disproportionate share program ~~or the financial assistance program~~:

$$TAERH = (CCD + MDD)/TPD$$

Where:

CCD = total charity care-other, plus charity care-Hill-Burton, minus 50 percent of unrestricted tax revenue from local governments, and restricted funds for indigent care, divided by gross revenue per adjusted patient day;

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however, if CCD is less than zero, then zero shall be used for CCD.

MDD = Medicaid inpatient days plus Medicaid HMO inpatient days.

TPD = total inpatient days.

TAERH = total amount earned by each rural hospital.

In computing the total amount earned by each rural hospital, the agency must use the most recent actual data reported in accordance with s. 408.061(4)(a).

(2) The agency shall use the following formula for distribution of funds for the disproportionate share ~~share/financial assistance program for rural hospitals~~.

(a) The agency shall first determine a preliminary payment amount for each rural hospital by allocating all available state funds using the following formula:

PDAER = (TAERH x TARH)/STAERH

Where:

PDAER = preliminary distribution amount for each rural hospital.

TAERH = total amount earned by each rural hospital.

TARH = total amount appropriated or distributed under this section.

STAERH = sum of total amount earned by each rural hospital.

(b) Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph (a).

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(c) Any state funds not spent due to an individual hospital's disproportionate-share limit will be redistributed proportionately to those hospitals with an available disproportionate-share limit to maximize available federal funds.

~~(c) The state-funds-only payment amount shall then be calculated for each hospital using the formula:~~

~~SFOER = Maximum value of (1) SFOL - PDAER or (2) 0~~

~~Where:~~

~~SFOER = state-funds-only payment amount for each rural hospital.~~

~~SFOL = state-funds-only payment level, which is set at 4 percent of TARH.~~

~~In calculating the SFOER, PDAER includes federal matching funds from paragraph (b).~~

~~(d) The adjusted total amount allocated to the rural disproportionate share program shall then be calculated using the following formula:~~

~~ATARH = (TARH - SSFOER)~~

~~Where:~~

~~ATARH = adjusted total amount appropriated or distributed under this section.~~

~~SSFOER = sum of the state-funds-only payment amount calculated under paragraph (c) for all rural hospitals.~~

~~(e) The distribution of the adjusted total amount of rural disproportionate share hospital funds shall then be calculated using the following formula:~~

~~DAERH = [(TAERH x ATARH)/STAERH]~~

~~Where:~~

~~DAERH = distribution amount for each rural hospital.~~

(d)~~(f)~~ Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph(a)~~(e)~~.

~~(g) State-funds-only payment amounts calculated under paragraph (c) and corresponding federal matching funds are then added to the results of paragraph (f) to determine the total distribution amount for each rural hospital.~~

(3) The Agency for Health Care Administration may recommend to the Legislature a formula to be used in subsequent fiscal years to distribute funds appropriated for this section that includes charity care, uncompensated care to medically indigent patients, and Medicaid inpatient days.

(4) In the event that federal matching funds for the rural hospital disproportionate share program are not available, state matching funds appropriated for the program may be ~~utilized for the Rural Hospital Financial Assistance Program and shall be~~ allocated to rural hospitals based on the formulas in subsections (1) and (2).

(5) In order to receive payments under this section, a hospital must be a rural hospital as defined in s. 395.602 and must meet the following additional requirements:

(a) Agree to conform to all agency requirements to ensure high quality in the provision of services, including

criteria adopted by agency rule concerning staffing ratios, medical records, standards of care, equipment, space, and such other standards and criteria as the agency deems appropriate as specified by rule.

(b) Agree to accept all patients, regardless of ability to pay, on a functional space-available basis.

(c) Agree to provide backup and referral services to the county public health departments and other low-income providers within the hospital's service area, including the development of written agreements between these organizations and the hospital.

(d) For any hospital owned by a county government which is leased to a management company, agree to submit on a quarterly basis a report to the agency, in a format specified by the agency, which provides a specific accounting of how all funds dispersed under this act are spent.

~~(6) For the 2000-2001 fiscal year only, the Agency for Health Care Administration shall use the following formula for distribution of the funds in Specific Appropriation 212 of the 2000-2001 General Appropriations Act for the disproportionate share/financial assistance program for rural hospitals.~~

~~(a) The agency shall first determine a preliminary payment amount for each rural hospital by allocating all available state funds using the following formula:~~

~~PDAER = (TAERH x TARH)/STAERH~~

~~Where:~~

~~PDAER = preliminary distribution amount for each rural hospital.~~

~~TAERH = total amount earned by each rural hospital.~~

~~TARH = total amount appropriated or distributed under this section.~~

~~STAERH = sum of total amount earned by each rural hospital.~~

~~(b) Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph (a).~~

~~(c) The state-funds-only payment amount is then calculated for each hospital using the formula:~~

~~SFOER = Maximum value of (1) SFOL - PDAER or (2) 0~~

~~Where:~~

~~SFOER = state-funds-only payment amount for each rural hospital.~~

~~SFOL = state-funds-only payment level, which is set at 4 percent of TARH.~~

~~(d) The adjusted total amount allocated to the rural disproportionate share program shall then be calculated using the following formula:~~

~~ATARH = (TARH - SSFOER)~~

~~Where:~~

~~ATARH = adjusted total amount appropriated or distributed under this section.~~

~~SSFOER = sum of the state-funds-only payment amount calculated under paragraph (c) for all rural hospitals.~~

~~(e) The determination of the amount of rural disproportionate share hospital funds is calculated by the following formula:~~

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~~TDAERH = [(TAERH x ATARH)/STAERH]~~

~~Where:~~

~~TDAERH = total distribution amount for each rural hospital.~~

~~(f) Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph (e).~~

~~(g) State-funds-only payment amounts calculated under paragraph (c) are then added to the results of paragraph (f) to determine the total distribution amount for each rural hospital.~~

~~(h) This subsection is repealed on July 1, 2001.~~

(6)~~(7)~~ This section applies only to hospitals that were defined as statutory rural hospitals, or their successor-in-interest hospital, prior to July 1, 1998. Any additional hospital that is defined as a statutory rural hospital, or its successor-in-interest hospital, on or after July 1, 1998, is not eligible for programs under this section unless additional funds are appropriated each fiscal year specifically to the rural hospital disproportionate share programs ~~and financial assistance programs~~ in an amount necessary to prevent any hospital, or its successor-in-interest hospital, eligible for the programs prior to July 1, 1998, from incurring a reduction in payments because of the eligibility of an additional hospital to participate in the programs. A hospital, or its successor-in-interest hospital, which received funds pursuant to this section before July 1, 1998, and which qualifies under s. 395.602(2)(e), shall be included in the programs under this

1 section and is not required to seek additional appropriations
2 under this subsection.
3 Section 9. Paragraph (a) of subsection (37) of section
4 409.912, Florida Statutes, is amended to read:
5 409.912 Cost-effective purchasing of health care.--The
6 agency shall purchase goods and services for Medicaid
7 recipients in the most cost-effective manner consistent with
8 the delivery of quality medical care. The agency shall
9 maximize the use of prepaid per capita and prepaid aggregate
10 fixed-sum basis services when appropriate and other
11 alternative service delivery and reimbursement methodologies,
12 including competitive bidding pursuant to s. 287.057, designed
13 to facilitate the cost-effective purchase of a case-managed
14 continuum of care. The agency shall also require providers to
15 minimize the exposure of recipients to the need for acute
16 inpatient, custodial, and other institutional care and the
17 inappropriate or unnecessary use of high-cost services. The
18 agency may establish prior authorization requirements for
19 certain populations of Medicaid beneficiaries, certain drug
20 classes, or particular drugs to prevent fraud, abuse, overuse,
21 and possible dangerous drug interactions. The Pharmaceutical
22 and Therapeutics Committee shall make recommendations to the
23 agency on drugs for which prior authorization is required. The
24 agency shall inform the Pharmaceutical and Therapeutics
25 Committee of its decisions regarding drugs subject to prior
26 authorization.
27 (37)(a) The agency shall implement a Medicaid
28 prescribed-drug spending-control program that includes the
29 following components:
30 1. Medicaid prescribed-drug coverage for brand-name
31 drugs for adult Medicaid recipients is limited to the

dispensing of four brand-name drugs per month per recipient. Children are exempt from this restriction. Antiretroviral agents are excluded from this limitation. No requirements for prior authorization or other restrictions on medications used to treat mental illnesses such as schizophrenia, severe depression, or bipolar disorder may be imposed on Medicaid recipients. Medications that will be available without restriction for persons with mental illnesses include atypical antipsychotic medications, conventional antipsychotic medications, selective serotonin reuptake inhibitors, and other medications used for the treatment of serious mental illnesses. The agency shall also limit the amount of a prescribed drug dispensed to no more than a 34-day supply. The agency shall continue to provide unlimited generic drugs, contraceptive drugs and items, and diabetic supplies. Although a drug may be included on the preferred drug formulary, it would not be exempt from the four-brand limit. The agency may authorize exceptions to the brand-name-drug restriction based upon the treatment needs of the patients, only when such exceptions are based on prior consultation provided by the agency or an agency contractor, but the agency must establish procedures to ensure that:

a. There will be a response to a request for prior consultation by telephone or other telecommunication device within 24 hours after receipt of a request for prior consultation;

b. A 72-hour supply of the drug prescribed will be provided in an emergency or when the agency does not provide a response within 24 hours as required by sub-subparagraph a.; and

c. Except for the exception for nursing home residents and other institutionalized adults and except for drugs on the restricted formulary for which prior authorization may be sought by an institutional or community pharmacy, prior authorization for an exception to the brand-name-drug restriction is sought by the prescriber and not by the pharmacy. When prior authorization is granted for a patient in an institutional setting beyond the brand-name-drug restriction, such approval is authorized for 12 months and monthly prior authorization is not required for that patient.

2. Reimbursement to pharmacies for Medicaid prescribed drugs shall be set at the average wholesale price less <u>15</u> ~~13.25~~ percent.

3. The agency shall develop and implement a process for managing the drug therapies of Medicaid recipients who are using significant numbers of prescribed drugs each month. The management process may include, but is not limited to, comprehensive, physician-directed medical-record reviews, claims analyses, and case evaluations to determine the medical necessity and appropriateness of a patient's treatment plan and drug therapies. The agency may contract with a private organization to provide drug-program-management services. The Medicaid drug benefit management program shall include initiatives to manage drug therapies for HIV/AIDS patients, patients using 20 or more unique prescriptions in a 180-day period, and the top 1,000 patients in annual spending.

4. The agency may limit the size of its pharmacy network based on need, competitive bidding, price negotiations, credentialing, or similar criteria. The agency shall give special consideration to rural areas in determining the size and location of pharmacies included in the Medicaid

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pharmacy network. A pharmacy credentialing process may include criteria such as a pharmacy's full-service status, location, size, patient educational programs, patient consultation, disease-management services, and other characteristics. The agency may impose a moratorium on Medicaid pharmacy enrollment when it is determined that it has a sufficient number of Medicaid-participating providers.

5. The agency shall develop and implement a program that requires Medicaid practitioners who prescribe drugs to use a counterfeit-proof prescription pad for Medicaid prescriptions. The agency shall require the use of standardized counterfeit-proof prescription pads by Medicaid-participating prescribers or prescribers who write prescriptions for Medicaid recipients. The agency may implement the program in targeted geographic areas or statewide.

6. The agency may enter into arrangements that require manufacturers of generic drugs prescribed to Medicaid recipients to provide rebates of at least 15.1 percent of the average manufacturer price for the manufacturer's generic products. These arrangements shall require that if a generic-drug manufacturer pays federal rebates for Medicaid-reimbursed drugs at a level below 15.1 percent, the manufacturer must provide a supplemental rebate to the state in an amount necessary to achieve a 15.1-percent rebate level.

7. The agency may establish a preferred drug formulary in accordance with 42 U.S.C. s. 1396r-8, and, pursuant to the establishment of such formulary, it is authorized to negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the Social Security Act and at no less than 10 percent of the average manufacturer price

1 as defined in 42 U.S.C. s. 1936 on the last day of a quarter
2 unless the federal or supplemental rebate, or both, equals or
3 exceeds 25 percent. There is no upper limit on the
4 supplemental rebates the agency may negotiate. The agency may
5 determine that specific products, brand-name or generic, are
6 competitive at lower rebate percentages. Agreement to pay the
7 minimum supplemental rebate percentage will guarantee a
8 manufacturer that the Medicaid Pharmaceutical and Therapeutics
9 Committee will consider a product for inclusion on the
10 preferred drug formulary. However, a pharmaceutical
11 manufacturer is not guaranteed placement on the formulary by
12 simply paying the minimum supplemental rebate. Agency
13 decisions will be made on the clinical efficacy of a drug and
14 recommendations of the Medicaid Pharmaceutical and
15 Therapeutics Committee, as well as the price of competing
16 products minus federal and state rebates. The agency is
17 authorized to contract with an outside agency or contractor to
18 conduct negotiations for supplemental rebates. For the
19 purposes of this section, the term "supplemental rebates" may
20 include, at the agency's discretion, cash rebates and other
21 program benefits that offset a Medicaid expenditure. Such
22 other program benefits may include, but are not limited to,
23 disease management programs, drug product donation programs,
24 drug utilization control programs, prescriber and beneficiary
25 counseling and education, fraud and abuse initiatives, and
26 other services or administrative investments with guaranteed
27 savings to the Medicaid program in the same year the rebate
28 reduction is included in the General Appropriations Act. The
29 agency is authorized to seek any federal waivers to implement
30 this initiative.
31

1 8. The agency shall establish an advisory committee
2 for the purposes of studying the feasibility of using a
3 restricted drug formulary for nursing home residents and other
4 institutionalized adults. The committee shall be comprised of
5 seven members appointed by the Secretary of Health Care
6 Administration. The committee members shall include two
7 physicians licensed under chapter 458 or chapter 459; three
8 pharmacists licensed under chapter 465 and appointed from a
9 list of recommendations provided by the Florida Long-Term Care
10 Pharmacy Alliance; and two pharmacists licensed under chapter
11 465.
12 Section 10. Effective upon this act becoming a law,
13 subsection (15) and paragraph (a) of subsection (22) of
14 section 409.913, Florida Statutes, are amended to read:
15 409.913 Oversight of the integrity of the Medicaid
16 program.--The agency shall operate a program to oversee the
17 activities of Florida Medicaid recipients, and providers and
18 their representatives, to ensure that fraudulent and abusive
19 behavior and neglect of recipients occur to the minimum extent
20 possible, and to recover overpayments and impose sanctions as
21 appropriate.
22 (15) The agency may impose any of the following
23 sanctions on a provider or a person for any of the acts
24 described in subsection (14):
25 (a) Suspension for a specific period of time of not
26 more than 1 year.
27 (b) Termination for a specific period of time of from
28 more than 1 year to 20 years.
29 (c) Imposition of a fine of up to $5,000 for each
30 violation. Each day that an ongoing violation continues, such
31 as refusing to furnish Medicaid-related records or refusing

1 access to records, is considered, for the purposes of this
2 section, to be a separate violation. Each instance of
3 improper billing of a Medicaid recipient; each instance of
4 including an unallowable cost on a hospital or nursing home
5 Medicaid cost report after the provider or authorized
6 representative has been advised in an audit exit conference or
7 previous audit report of the cost unallowability; each
8 instance of furnishing a Medicaid recipient goods or
9 professional services that are inappropriate or of inferior
10 quality as determined by competent peer judgment; each
11 instance of knowingly submitting a materially false or
12 erroneous Medicaid provider enrollment application, request
13 for prior authorization for Medicaid services, drug exception
14 request, or cost report; each instance of inappropriate
15 prescribing of drugs for a Medicaid recipient as determined by
16 competent peer judgment; and each false or erroneous Medicaid
17 claim leading to an overpayment to a provider is considered,
18 for the purposes of this section, to be a separate violation.
19 (d) Immediate suspension, if the agency has received
20 information of patient abuse or neglect or of any act
21 prohibited by s. 409.920. Upon suspension, the agency must
22 issue an immediate final order under s. 120.569(2)(n).
23 (e) A fine, not to exceed $10,000, for a violation of
24 paragraph (14)(i).
25 (f) Imposition of liens against provider assets,
26 including, but not limited to, financial assets and real
27 property, not to exceed the amount of fines or recoveries
28 sought, upon entry of an order by a court determining that
29 such moneys are due or recoverable.
30 (g) Other remedies as permitted by law to effect the
31 recovery of a fine or overpayment.

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(22)(a) In an audit or investigation of a violation committed by a provider which is conducted pursuant to this section, the agency is entitled to recover all ~~up to $15,000 in~~ investigative, legal, and expert witness costs if the agency's findings were not contested by the provider or, if contested, the agency ultimately prevailed.

Section 11. Effective April 1, 2002, subsection (2) of section 409.915, Florida Statutes, is amended to read:

409.915 County contributions to Medicaid.--Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, in order to acquire a certain portion of these funds, the state shall charge the counties for certain items of care and service as provided in this section.

(2) A county's participation must be 35 percent of the total cost, or the applicable discounted cost paid by the state for Medicaid recipients enrolled in health maintenance organizations or prepaid health plans, of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $90~~$55~~ per month per person.

Section 12. The Legislature determines and declares that this act fulfills an important state interest.

Section 13. Subsection (14) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.--Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee

schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(14) A provider of prescribed drugs shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee. The agency is directed to implement a variable dispensing fee for payments for prescribed medicines while ensuring continued access for Medicaid recipients. The variable dispensing fee may be based upon, but not limited to, either or both the volume of prescriptions dispensed by a specific pharmacy provider, ~~and~~ the volume of prescriptions dispensed to an individual recipient, and dispensing of preferred-drug-list products. The agency shall increase the pharmacy dispensing fee authorized by statute and in the annual General Appropriations Act by $0.50 for the dispensing of a Medicaid preferred-drug-list product and reduce the pharmacy dispensing fee by $0.50 for the dispensing of a

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Medicaid product that is not included on the preferred-drug list.The agency is authorized to limit reimbursement for prescribed medicine in order to comply with any limitations or directions provided for in the General Appropriations Act, which may include implementing a prospective or concurrent utilization review program.

Section 14. Section 400.0225, Florida Statutes, is repealed.

Section 15. Paragraph (a) of subsection (2) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.--

(2) The agency shall provide additional information in consumer-friendly printed and electronic formats to assist consumers and their families in comparing and evaluating nursing home facilities.

(a) The agency shall provide an Internet site which shall include at least the following information either directly or indirectly through a link to another established site or sites of the agency's choosing:

1. A list by name and address of all nursing home facilities in this state.

2. Whether such nursing home facilities are proprietary or nonproprietary.

3. The current owner of the facility's license and the year that that entity became the owner of the license.

4. The name of the owner or owners of each facility and whether the facility is affiliated with a company or other organization owning or managing more than one nursing facility in this state.

5. The total number of beds in each facility.

6. The number of private and semiprivate rooms in each facility.

7. The religious affiliation, if any, of each facility.

8. The languages spoken by the administrator and staff of each facility.

9. Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.

10. Recreational and other programs available at each facility.

11. Special care units or programs offered at each facility.

12. Whether the facility is a part of a retirement community that offers other services pursuant to part III, part IV, or part V.

~~13. The results of consumer and family satisfaction surveys for each facility, as described in s. 400.0225. The results may be converted to a score or scores, which may be presented in either numeric or symbolic form for the intended consumer audience.~~

13.~~14.~~ Survey and deficiency information contained on the Online Survey Certification and Reporting (OSCAR) system of the federal Health Care Financing Administration, including annual survey, revisit, and complaint survey information, for each facility for the past 45 months. For noncertified nursing homes, state survey and deficiency information, including annual survey, revisit, and complaint survey information for the past 45 months shall be provided.

14.~~15.~~ A summary of the Online Survey Certification and Reporting (OSCAR) data for each facility over the past 45 months. Such summary may include a score, rating, or comparison ranking with respect to other facilities based on the number of citations received by the facility of annual, revisit, and complaint surveys; the severity and scope of the citations; and the number of annual recertification surveys the facility has had during the past 45 months. The score, rating, or comparison ranking may be presented in either numeric or symbolic form for the intended consumer audience.

Section 16. Paragraph (c) of subsection (5) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.--

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(c) Participate ~~consistently~~ in a ~~the required~~ consumer satisfaction process ~~as prescribed by the agency~~, and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing facility, its environment, the services and care provided, the staff's skills and interactions with residents, attention to resident's needs, and the facility's efforts to act on information gathered from the consumer satisfaction measures.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

1 Section 17. Section 400.071, Florida Statutes, is
2 amended to read:
3 400.071 Application for license.--
4 (1) An application for a license as required by s.
5 400.062 shall be made to the agency on forms furnished by it
6 and shall be accompanied by the appropriate license fee.
7 (2) The application shall be under oath and shall
8 contain the following:
9 (a) The name, address, and social security number of
10 the applicant if an individual; if the applicant is a firm,
11 partnership, or association, its name, address, and employer
12 identification number (EIN), and the name and address of any
13 controlling interest; and the name by which the facility is to
14 be known.
15 (b) The name of any person whose name is required on
16 the application under the provisions of paragraph (a) and who
17 owns at least a 10-percent interest in any professional
18 service, firm, association, partnership, or corporation
19 providing goods, leases, or services to the facility for which
20 the application is made, and the name and address of the
21 professional service, firm, association, partnership, or
22 corporation in which such interest is held.
23 (c) The location of the facility for which a license
24 is sought and an indication, as in the original application,
25 that such location conforms to the local zoning ordinances.
26 (d) The name of the person or persons under whose
27 management or supervision the facility will be conducted and
28 the name of the administrator.
29 (e) A signed affidavit disclosing any financial or
30 ownership interest that a person or entity described in
31 paragraph (a) or paragraph (d) has held in the last 5 years in

1 any entity licensed by this state or any other state to
2 provide health or residential care which has closed
3 voluntarily or involuntarily; has filed for bankruptcy; has
4 had a receiver appointed; has had a license denied, suspended,
5 or revoked; or has had an injunction issued against it which
6 was initiated by a regulatory agency. The affidavit must
7 disclose the reason any such entity was closed, whether
8 voluntarily or involuntarily.
9 (f) The total number of beds and the total number of
10 Medicare and Medicaid certified beds.
11 (g) Information relating to the number, experience,
12 and training of the employees of the facility and of the moral
13 character of the applicant and employees which the agency
14 requires by rule, including the name and address of any
15 nursing home with which the applicant or employees have been
16 affiliated through ownership or employment within 5 years of
17 the date of the application for a license and the record of
18 any criminal convictions involving the applicant and any
19 criminal convictions involving an employee if known by the
20 applicant after inquiring of the employee. The applicant must
21 demonstrate that sufficient numbers of qualified staff, by
22 training or experience, will be employed to properly care for
23 the type and number of residents who will reside in the
24 facility.
25 (h) Copies of any civil verdict or judgment involving
26 the applicant rendered within the 10 years preceding the
27 application, relating to medical negligence, violation of
28 residents' rights, or wrongful death. As a condition of
29 licensure, the licensee agrees to provide to the agency copies
30 of any new verdict or judgment involving the applicant,
31 relating to such matters, within 30 days after filing with the

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1 clerk of the court. The information required in this
2 paragraph shall be maintained in the facility's licensure file
3 and in an agency database which is available as a public
4 record.
5 (3) The applicant shall submit evidence which
6 establishes the good moral character of the applicant,
7 manager, supervisor, and administrator. No applicant, if the
8 applicant is an individual; no member of a board of directors
9 or officer of an applicant, if the applicant is a firm,
10 partnership, association, or corporation; and no licensed
11 nursing home administrator shall have been convicted, or found
12 guilty, regardless of adjudication, of a crime in any
13 jurisdiction which affects or may potentially affect residents
14 in the facility.
15 (4) Each applicant for licensure must comply with the
16 following requirements:
17 (a) Upon receipt of a completed, signed, and dated
18 application, the agency shall require background screening of
19 the applicant, in accordance with the level 2 standards for
20 screening set forth in chapter 435. As used in this
21 subsection, the term "applicant" means the facility
22 administrator, or similarly titled individual who is
23 responsible for the day-to-day operation of the licensed
24 facility, and the facility financial officer, or similarly
25 titled individual who is responsible for the financial
26 operation of the licensed facility.
27 (b) The agency may require background screening for a
28 member of the board of directors of the licensee or an officer
29 or an individual owning 5 percent or more of the licensee if
30 the agency has probable cause to believe that such individual
31

1 has been convicted of an offense prohibited under the level 2
2 standards for screening set forth in chapter 435.
3 (c) Proof of compliance with the level 2 background
4 screening requirements of chapter 435 which has been submitted
5 within the previous 5 years in compliance with any other
6 health care or assisted living licensure requirements of this
7 state is acceptable in fulfillment of paragraph (a). Proof of
8 compliance with background screening which has been submitted
9 within the previous 5 years to fulfill the requirements of the
10 Department of Insurance pursuant to chapter 651 as part of an
11 application for a certificate of authority to operate a
12 continuing care retirement community is acceptable in
13 fulfillment of the Department of Law Enforcement and Federal
14 Bureau of Investigation background check.
15 (d) A provisional license may be granted to an
16 applicant when each individual required by this section to
17 undergo background screening has met the standards for the
18 Department of Law Enforcement background check, but the agency
19 has not yet received background screening results from the
20 Federal Bureau of Investigation, or a request for a
21 disqualification exemption has been submitted to the agency as
22 set forth in chapter 435, but a response has not yet been
23 issued. A license may be granted to the applicant upon the
24 agency's receipt of a report of the results of the Federal
25 Bureau of Investigation background screening for each
26 individual required by this section to undergo background
27 screening which confirms that all standards have been met, or
28 upon the granting of a disqualification exemption by the
29 agency as set forth in chapter 435. Any other person who is
30 required to undergo level 2 background screening may serve in
31 his or her capacity pending the agency's receipt of the report

1 from the Federal Bureau of Investigation; however, the person
2 may not continue to serve if the report indicates any
3 violation of background screening standards and a
4 disqualification exemption has not been requested of and
5 granted by the agency as set forth in chapter 435.
6 (e) Each applicant must submit to the agency, with its
7 application, a description and explanation of any exclusions,
8 permanent suspensions, or terminations of the applicant from
9 the Medicare or Medicaid programs. Proof of compliance with
10 disclosure of ownership and control interest requirements of
11 the Medicaid or Medicare programs shall be accepted in lieu of
12 this submission.
13 (f) Each applicant must submit to the agency a
14 description and explanation of any conviction of an offense
15 prohibited under the level 2 standards of chapter 435 by a
16 member of the board of directors of the applicant, its
17 officers, or any individual owning 5 percent or more of the
18 applicant. This requirement shall not apply to a director of a
19 not-for-profit corporation or organization if the director
20 serves solely in a voluntary capacity for the corporation or
21 organization, does not regularly take part in the day-to-day
22 operational decisions of the corporation or organization,
23 receives no remuneration for his or her services on the
24 corporation or organization's board of directors, and has no
25 financial interest and has no family members with a financial
26 interest in the corporation or organization, provided that the
27 director and the not-for-profit corporation or organization
28 include in the application a statement affirming that the
29 director's relationship to the corporation satisfies the
30 requirements of this paragraph.
31

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

(5) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the nursing home in accordance with the requirements of this part and all rules adopted under this part, and the agency shall establish standards for this purpose, including information reported under paragraph (2)(e). The agency also shall establish documentation requirements, to be completed by each applicant, that show anticipated facility revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the facility, and an applicant's access to contingency financing.

(6) If the applicant offers continuing care agreements as defined in chapter 651, proof shall be furnished that such applicant has obtained a certificate of authority as required for operation under that chapter.

(7) As a condition of licensure, each licensee, except one offering continuing care agreements as defined in chapter 651, must agree to accept recipients of Title XIX of the Social Security Act on a temporary, emergency basis. The persons whom the agency may require such licensees to accept are those recipients of Title XIX of the Social Security Act who are residing in a facility in which existing conditions constitute an immediate danger to the health, safety, or security of the residents of the facility.

~~(8) As a condition of licensure, each facility must agree to participate in a consumer satisfaction measurement process as prescribed by the agency.~~

(8)~~(9)~~ The agency may not issue a license to a nursing home that fails to receive a certificate of need under the

provisions of ss. 408.031-408.045. It is the intent of the Legislature that, in reviewing a certificate-of-need application to add beds to an existing nursing home facility, preference be given to the application of a licensee who has been awarded a Gold Seal as provided for in s. 400.235, if the applicant otherwise meets the review criteria specified in s. 408.035.

(9)~~(10)~~ The agency may develop an abbreviated survey for licensure renewal applicable to a licensee that has continuously operated as a nursing facility since 1991 or earlier, has operated under the same management for at least the preceding 30 months, and has had during the preceding 30 months no class I or class II deficiencies.

(10)~~(11)~~ The agency may issue an inactive license to a nursing home that will be temporarily unable to provide services but that is reasonably expected to resume services. Such designation may be made for a period not to exceed 12 months but may be renewed by the agency for up to 6 additional months. Any request by a licensee that a nursing home become inactive must be submitted to the agency and approved by the agency prior to initiating any suspension of service or notifying residents. Upon agency approval, the nursing home shall notify residents of any necessary discharge or transfer as provided in s. 400.0255.

(11)~~(12)~~ As a condition of licensure, each facility must establish and submit with its application a plan for quality assurance and for conducting risk management.

Section 18. Paragraph (q) of subsection (2) of section 409.815, Florida Statutes, is amended to read:

409.815 Health benefits coverage; limitations.--

(2) BENCHMARK BENEFITS.--In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.820, the health benefits coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(q) Dental services.--Subject to a specific appropriation for this benefit, covered services include those dental services provided to children by the Florida Medicaid program under s. 409.906(5)~~s. 409.906(6)~~.

Section 19. Except as otherwise specifically provided in this act, this act shall take effect January 1, 2002.

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