

By the Committee on Health, Aging, and Long-Term Care; and
Senator Saunders

317-2065-04

1 A bill to be entitled
2 An act relating to the licensure of health care
3 providers; designating parts I, II, III, and IV
4 of ch. 408, F.S., relating to health care
5 administration; creating ss. 408.801-408.819,
6 F.S.; providing a short title; providing
7 legislative findings and intent; providing
8 applicability; providing definitions;
9 prohibiting the provision of certain services
10 without obtaining a license from the Agency for
11 Health Care Administration; requiring that the
12 license be displayed; requiring that licensure
13 fees cover the agency's cost of the licensure,
14 inspection, and regulation of providers;
15 authorizing the agency to adopt rules;
16 providing requirements for license application;
17 providing for late fees; providing duties of
18 the agency, including requirements for
19 inspections; authorizing the electronic
20 submission of information to the agency;
21 providing requirements for licensure upon a
22 change of ownership of a provider; specifying
23 license categories; requiring background
24 screening of a licensee, administrator,
25 financial officer, or controlling interest;
26 providing minimum licensure requirements;
27 providing requirements for a licensee that
28 discontinues operation; requiring that notice
29 be provided to clients; requiring a licensee to
30 inform clients of certain rights; requiring an
31 applicant for licensure to provide proof of

1 liability insurance and financial ability to
2 operate; authorizing the agency to make
3 inspections and investigations; prohibiting
4 certain unlicensed activity; providing
5 penalties; providing for administrative fines;
6 authorizing the agency to impose a moratorium
7 under certain circumstances; specifying grounds
8 under which the agency may deny or revoke a
9 license; authorizing the agency to institute
10 proceedings for an injunction against a
11 provider; requiring that fees and fines be
12 deposited into the Health Care Trust Fund and
13 used for administering the laws and rules
14 governing providers; providing rulemaking
15 authority; amending s. 112.045, F.S., relating
16 to the Drug-Free Workplace Act; requiring
17 drug-testing laboratories to be in compliance
18 with part II of ch. 408, F.S.; deleting
19 obsolete and repetitive provisions; providing
20 for rules and licensure fees; amending ss.
21 383.301, 383.305, 383.309, 383.315, 383.324,
22 383.33, and 383.335, F.S., and repealing ss.
23 383.304, 383.325, 383.331, and 383.332, F.S.,
24 relating to the Birth Center Licensure Act;
25 requiring birth centers to be in compliance
26 with part II of ch. 408, F.S.; providing for
27 licensure fees; authorizing the agency to adopt
28 rules; providing for administrative fines;
29 conforming provisions with the requirements of
30 part II of ch. 408, F.S.; amending ss. 390.011,
31 390.012, 390.014, and 390.018, F.S., and

1 repealing ss. 390.013, 390.015, 390.016,
2 390.017, 390.019, and 390.021, F.S., relating
3 to the regulation of abortion clinics;
4 requiring abortion clinics to be in compliance
5 with part II of ch. 408, F.S.; providing for
6 licensure fees; authorizing the agency to adopt
7 rules; providing for administrative fines;
8 conforming provisions with the requirements of
9 part II of ch. 408, F.S.; amending s. 394.455,
10 F.S., relating to the Florida Mental Health
11 Act; clarifying a definition; amending ss.
12 394.67, 394.875, 394.877, 394.878, 394.879,
13 394.90, and 394.902, F.S., and repealing s.
14 394.876, F.S., relating to the Community
15 Substance Abuse and Mental Health Services Act;
16 defining the term "short-term residential
17 treatment facility"; requiring substance abuse
18 or mental health facilities, programs, and
19 services to be in compliance with part II of
20 ch. 408, F.S.; providing for licensure fees;
21 authorizing the agency to adopt rules;
22 providing for administrative penalties;
23 conforming provisions with the requirements of
24 part II of ch. 408, F.S.; amending ss. 395.003,
25 395.004, 395.0161, 395.0163, 395.0199,
26 395.1046, 395.1055, and 395.1065, F.S., and
27 repealing ss. 395.002(4), 395.0055, and
28 395.0162, F.S., relating to hospitals and other
29 licensed facilities; requiring hospitals and
30 other licensed facilities to be in compliance
31 with part II of ch. 408, F.S.; providing for

1 licensure fees; authorizing the agency to adopt
2 rules; providing for administrative fines;
3 conforming provisions with the requirements of
4 part II of ch. 408, F.S.; amending s. 395.0197,
5 F.S.; providing that a health care facility
6 must use the services of, rather than hire, a
7 risk manager; restricting the number of
8 internal risk management programs in separate
9 hospitals which may be the responsibility of a
10 risk manager; providing exceptions; amending
11 ss. 395.10973, 395.10974, and 395.10975, F.S.,
12 relating to health care risk managers;
13 requiring health care risk managers to comply
14 with part II of ch. 408, F.S.; providing for
15 fees; authorizing the agency to adopt rules;
16 providing for administrative fines; conforming
17 provisions with the requirements of part II of
18 ch. 408, F.S.; amending ss. 400.022, 400.051,
19 400.062, 400.063, 400.071, 400.102, 400.111,
20 400.1183, 400.121, 400.141, 400.17, 400.179,
21 400.18, 400.19, 400.191, 400.20, 400.211, and
22 400.23, F.S., and repealing ss. 400.021(5) and
23 (20), 400.125, and 400.241(1) and (2), F.S.,
24 relating to nursing homes; requiring nursing
25 homes to be in compliance with part II of ch.
26 408, F.S.; providing for licensure fees;
27 authorizing the agency to adopt rules;
28 providing for administrative fines; revising
29 reporting requirements; conforming provisions
30 with the requirements of part II of ch. 408,
31 F.S.; amending ss. 400.402, 400.407, 400.4075,

1 400.408, 400.411, 400.412, 400.414, 400.417,
2 400.4174, 400.4176, 400.418, 400.419, 400.42,
3 400.424, 400.4255, 400.4256, 400.427, 400.4275,
4 400.431, 400.434, 400.441, 400.442, 400.444,
5 400.452, and 400.454, F.S., and repealing ss.
6 400.415, 400.4178(7), 400.435(1), 400.447(1),
7 (2), and (3), and 400.451, F.S., relating to
8 assisted living facilities; requiring assisted
9 living facilities to be in compliance with part
10 II of ch. 408, F.S.; providing for licensure
11 fees; authorizing the agency to adopt rules;
12 providing for administrative fines; conforming
13 provisions with the requirements of part II of
14 ch. 408, F.S.; amending ss. 400.464, 400.471,
15 400.474, 400.484, 400.494, 400.495, 400.497,
16 400.506, 400.509, and 400.512, F.S., and
17 repealing s. 400.515, F.S., relating to home
18 health agencies and nurse registries; requiring
19 home health agencies and nurse registries to be
20 in compliance with part II of ch. 408, F.S.;
21 providing for licensure fees; authorizing the
22 agency to adopt rules; providing for
23 administrative fines; conforming provisions
24 with the requirements of part II of ch. 408,
25 F.S.; amending ss. 400.551, 400.554, 400.555,
26 400.556, 400.5565, 400.557, 400.5572, 400.559,
27 400.56, and 400.562, F.S., and repealing ss.
28 400.5575, 400.558, and 400.564, F.S., relating
29 to adult day care centers; requiring adult day
30 care centers to be in compliance with part II
31 of ch. 408, F.S.; providing for licensure fees;

1 authorizing the agency to adopt rules;
2 providing for administrative fines; conforming
3 provisions with the requirements of part II of
4 ch. 408, F.S.; amending ss. 400.602, 400.605,
5 400.606, 400.6065, 400.607, and 400.6095, F.S.,
6 relating to hospices; requiring hospices to be
7 in compliance with part II of ch. 408, F.S.;
8 providing for licensure fees; authorizing the
9 agency to adopt rules; providing for
10 administrative fines; conforming provisions
11 with the requirements of part II of ch. 408,
12 F.S.; amending ss. 400.617, 400.619, 400.6194,
13 400.6196, 400.621, 400.6211, and 400.625, F.S.,
14 and repealing s. 400.622, F.S., relating to
15 adult family-care homes; requiring adult
16 family-care homes to be in compliance with part
17 II of ch. 408, F.S.; providing for licensure
18 fees; authorizing the agency to adopt rules;
19 providing for administrative fines; conforming
20 provisions with the requirements of part II of
21 ch. 408, F.S.; amending ss. 400.801 and
22 400.805, F.S., relating to homes for special
23 services and transitional living facilities;
24 requiring such homes and facilities to be in
25 compliance with part II of ch. 408, F.S.;
26 providing for licensure fees; authorizing the
27 agency to adopt rules; providing for
28 administrative fines; conforming provisions
29 with the requirements of part II of ch. 408,
30 F.S.; amending ss. 400.902, 400.903, 400.905,
31 400.907, 400.908, 400.912, 400.914, and

1 400.915, F.S., and repealing ss. 400.906,
2 400.910, 400.911, 400.913, 400.916, and
3 400.917, F.S., relating to prescribed pediatric
4 extended care centers; requiring such centers
5 to be in compliance with part II of ch. 408,
6 F.S.; providing for licensure fees; authorizing
7 the agency to adopt rules; providing for
8 administrative fines; conforming provisions
9 with the requirements of part II of ch. 408,
10 F.S.; amending ss. 400.925, 400.93, 400.931,
11 400.932, 400.933, and 400.935, F.S., and
12 repealing ss. 400.95, 400.953(2), 400.955(4),
13 and 400.956, F.S., relating to home medical
14 equipment providers; requiring home medical
15 equipment providers to be in compliance with
16 part II of ch. 408, F.S.; providing for
17 licensure fees; authorizing the agency to adopt
18 rules; providing for administrative fines;
19 conforming provisions with the requirements of
20 part II of ch. 408, F.S.; amending ss. 400.960,
21 400.962, 400.967, 400.968, and 400.969, F.S.,
22 and repealing ss. 400.963 and 400.965, F.S.,
23 relating to intermediate care facilities for
24 the developmentally disabled; requiring such
25 facilities to be in compliance with part II of
26 ch. 408, F.S.; providing for licensure fees;
27 authorizing the agency to adopt rules;
28 providing for administrative fines; conforming
29 provisions with the requirements of part II of
30 ch. 408, F.S.; amending s. 400.908, F.S.;

31 requiring health care services pools to be in

1 compliance with part II of ch. 408, F.S.;

2 providing for licensure fees; authorizing the

3 agency to adopt rules; providing for

4 administrative fines; conforming provisions

5 with the requirements of part II of ch. 408,

6 F.S.; amending ss. 400.991, 400.9915, 400.992,

7 400.9925, 400.993, 400.9935, and 400.995, F.S.,

8 and repealing ss. 400.9905(2), 400.994, and

9 400.9945, F.S., relating to health care

10 clinics; requiring health care clinics to be in

11 compliance with part II of ch. 408, F.S.;

12 providing for licensure fees; authorizing the

13 agency to adopt rules; providing for

14 administrative fines; conforming provisions

15 with the requirements of part II of ch. 408,

16 F.S.; amending s. 408.831, F.S., relating to

17 the authority of the Agency for Health Care

18 Administration to impose certain penalties

19 against a regulated or licensed entity;

20 conforming provisions to changes made by the

21 act; amending s. 440.102, F.S., relating to the

22 drug-free workplace program; requiring

23 laboratories to be in compliance with the

24 requirements of part II of ch. 408, F.S.;

25 conforming provisions to changes made by the

26 act; amending ss. 483.035, 483.051, 483.061,

27 483.091, 483.101, 483.111, 483.172, 483.201,

28 483.221, and 483.23, F.S., and repealing ss.

29 483.131 and 483.25, F.S., relating to clinical

30 laboratories; requiring clinical laboratories

31 to be in compliance with part II of ch. 408,

1 F.S.; providing for licensure fees; authorizing
2 the agency to adopt rules; providing for
3 administrative fines; conforming provisions
4 with the requirements of part II of ch. 408,
5 F.S.; amending ss. 483.291, 483.294, 483.30,
6 483.302, and 483.32, F.S., and repealing ss.
7 483.311, 483.317(1), 483.322(1), and 483.328,
8 F.S., relating to multiphasic health testing
9 centers; requiring such centers to be in
10 compliance with part II of ch. 408, F.S.;
11 providing for licensure fees; authorizing the
12 agency to adopt rules; providing for
13 administrative fines; conforming provisions
14 with the requirements of part II of ch. 408,
15 F.S.; providing for ss. 408.801-408.819, F.S.,
16 to prevail in the case of a conflict with other
17 laws governing the licensure of health care
18 providers by the agency; authorizing the agency
19 to issue a license for less than a specified
20 period and to charge a prorated fee; providing
21 an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Part I of chapter 408, Florida Statutes,
26 consisting of sections 408.02, 408.031, 408.032, 408.033,
27 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038,
28 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045,
29 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08,
30 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20,
31 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057,

1 and 408.7071, is created and entitled "Health Facility and
2 Services Planning."

3 Section 2. Part II of chapter 408, Florida Statutes,
4 consisting of sections 408.801, 408.802, 408.803, 408.804,
5 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
6 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
7 408.819, and 408.831, is created and entitled "Health Care
8 Licensing: General Provisions."

9 Section 3. Part III of chapter 408, Florida Statutes,
10 consisting of sections 408.90, 408.901, 408.902, 408.903,
11 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909, is
12 created and entitled "Health Insurance Access."

13 Section 4. Part IV of chapter 408, Florida Statutes,
14 consisting of sections 408.911, 408.913, 408.914, 408.915,
15 408.916, 408.917, and 408.918, is created and entitled "Health
16 and Human Services Eligibility Access System."

17 Section 5. Sections 408.801 through 408.819, Florida
18 Statutes, are created to read:

19 408.801 Short title; purpose.--

20 (1) This part may be cited as the "Health Care
21 Licensing Procedures Act."

22 (2) The Legislature finds that there is unnecessary
23 duplication and variation in the requirements for licensure by
24 the Agency for Health Care Administration, brought about by
25 the historical pattern of legislative action focused
26 exclusively on a single type of regulated provider. It is the
27 intent of the Legislature to provide a streamlined and
28 consistent set of basic licensing requirements for all such
29 providers in order to minimize confusion, standardize
30 terminology, and include issues that are otherwise not

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1 adequately addressed in the statutes pertaining to specific
2 providers.

3 408.802 Applicability.--The provisions of this part
4 apply to the provision of services that necessitate licensure
5 as defined in this part and to the following entities licensed
6 or registered by the Agency for Health Care Administration, as
7 further described in chapters 112, 383, 390, 394, 395, 400,
8 440, and 483:

9 (1) Laboratories authorized to perform testing under
10 the Drug-Free Workplace Act, as provided under ss. 112.0455
11 and 440.102.

12 (2) Birth centers, as provided under chapter 383.

13 (3) Abortion clinics, as provided under chapter 390.

14 (4) Crisis stabilization units, as provided under
15 parts I and IV of chapter 394.

16 (5) Short-term residential treatment units, as
17 provided under parts I and IV of chapter 394.

18 (6) Residential treatment facilities, as provided
19 under part IV of chapter 394.

20 (7) Residential treatment centers for children and
21 adolescents, as provided under part IV of chapter 394.

22 (8) Hospitals, as provided under part I of chapter
23 395.

24 (9) Ambulatory surgical centers, as provided under
25 part I of chapter 395.

26 (10) Mobile surgical facilities, as provided under
27 part I of chapter 395.

28 (11) Private review agents, as provided under part I
29 of chapter 395.

30 (12) Health care risk managers, as provided under part
31 I of chapter 395.

- 1 (13) Nursing homes, as provided under part II of
2 chapter 400.
- 3 (14) Assisted living facilities, as provided under
4 part III of chapter 400.
- 5 (15) Home health agencies, as provided under part IV
6 of chapter 400.
- 7 (16) Nurse registries, as provided under part IV of
8 chapter 400.
- 9 (17) Companion services or homemaker services
10 providers, as provided under part IV of chapter 400.
- 11 (18) Adult day care centers, as provided under part V
12 of chapter 400.
- 13 (19) Hospices, as provided under part VI of chapter
14 400.
- 15 (20) Adult family-care homes, as provided under part
16 VII of chapter 400.
- 17 (21) Homes for special services, as provided under
18 part VIII of chapter 400.
- 19 (22) Transitional living facilities, as provided under
20 part VIII of chapter 400.
- 21 (23) Prescribed pediatric extended care centers, as
22 provided under part IX of chapter 400.
- 23 (24) Home medical equipment providers, as provided
24 under part X of chapter 400.
- 25 (25) Intermediate care facilities for the
26 developmentally disabled, as provided under part XI of chapter
27 400.
- 28 (26) Health care services pools, as provided under
29 part XII of chapter 400.
- 30 (27) Health care clinics, as provided under part XIII
31 of chapter 400.

1 (28) Clinical laboratories, as provided under part I
2 of chapter 483.

3 (29) Multiphasic health testing centers, as provided
4 under part II of chapter 483.

5 408.803 Definitions.--As used in this part, the term:

6 (1) "Agency" means the Agency for Health Care
7 Administration, which is the licensing agency under this part.

8 (2) "Applicant" means an individual, corporation,
9 partnership, firm, association, or governmental entity that
10 submits an application to the agency for a license.

11 (3) "Authorizing statute" means the statute
12 authorizing the licensed operation of a provider listed in s.
13 408.802.

14 (4) "Certification" means certification as a Medicare
15 or Medicaid provider of the services that necessitate
16 licensure or certification pursuant to the federal Clinical
17 Laboratory Improvement Amendments (CLIA).

18 (5) "Change of ownership" means an event in which the
19 licensee changes to a different legal entity or in which 45
20 percent or more of the ownership or voting shares is
21 transferred or assigned, including the final transfer or
22 assignment of multiple transfers or assignments over a 2-year
23 period which cumulatively total 45 percent or greater.
24 However, a change solely in the management company is not a
25 change of ownership.

26 (6) "Client" means any person receiving services from
27 a provider listed in s. 408.802.

28 (7) "Controlling interest" means:

29 (a) The applicant for licensure or a licensee;

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1 (b) A person or entity that serves as an officer of,
2 is on the board of directors of, or has a 5 percent or greater
3 ownership interest in the applicant or licensee; or

4 (c) A person or entity that serves as an officer of,
5 is on the board of directors of, or has a 5 percent or greater
6 ownership interest in the management company or other entity,
7 related or unrelated, which the applicant or licensee may
8 contract with to operate the provider.

9
10 The term does not include a voluntary board member.

11 (8) "License" means any permit, registration,
12 certificate, or license issued by the agency.

13 (9) "Licensee" means an individual, corporation,
14 partnership, firm, association, or governmental entity that is
15 issued a permit, registration, certificate, or license by the
16 agency. The licensee is legally responsible for all aspects of
17 the provider operation.

18 (10) "Moratorium" means a prohibition on the
19 acceptance of new clients.

20 (11) "Provider" means any activity, service, agency,
21 or facility regulated by the agency and listed in s. 408.802.

22 (12) "Services that necessitate licensure" means those
23 services, including residential services, which require a
24 valid license before those services may be provided in
25 accordance with authorizing statutes and agency rules.

26 (13) "Voluntary board member" means a director of a
27 not-for-profit corporation or organization who serves solely
28 in a voluntary capacity for the licensee, does not receive any
29 remuneration for his or her services on the board of
30 directors, and has no financial interest in the corporation or
31 organization. The agency shall recognize a person as a

1 voluntary board member following submission of a statement to
2 the agency by the director and the not-for-profit corporation
3 or organization which affirms that the director conforms to
4 this definition. The statement affirming the status of the
5 director must be submitted to the agency on a form provided by
6 the agency.

7 408.804 License required; display.--

8 (1) It is unlawful to provide services that
9 necessitate licensure, or operate or maintain a provider
10 offering or providing services that necessitate licensure,
11 without first obtaining from the agency a license authorizing
12 such operation.

13 (2) A license must be displayed in a conspicuous place
14 readily visible to clients who enter at the address that
15 appears on the license and is valid only in the hands of the
16 individual, firm, partnership, association, or corporation to
17 whom it is issued and may not be sold, assigned, or otherwise
18 transferred, voluntarily or involuntarily. The license is
19 valid only for the licensee, provider, and location for which
20 the license is originally issued.

21 408.805 Fees required; adjustments.--Unless otherwise
22 limited by authorizing statutes, license fees must be
23 reasonably calculated by the agency to cover its costs in
24 carrying out its responsibilities under this part, authorizing
25 statutes, and applicable rules, including the cost of
26 licensure, inspection, and regulation of providers, and must
27 be of such amount that the total fees collected do not exceed
28 the cost of administering and enforcing compliance with this
29 part, authorizing statutes, and applicable rules.

30 (1) Licensure fees shall be adjusted for biennial
31 licensure in agency rules.

1 (2) The agency shall annually adjust licensure fees,
2 including fees paid per bed, by not more than the change in
3 the consumer price index based on the 12 months immediately
4 preceding the increase.

5 (3) The agency may, by rule, adjust licensure fees to
6 cover the cost of regulation under this part, authorizing
7 statutes, and applicable rules.

8 (4) An inspection fee must be paid as required in
9 authorizing statutes.

10 (5) Licensure and inspection fees are nonrefundable.

11 (6) When a change is reported which requires issuance
12 of a license, a fee must be assessed. The fee must be based on
13 the actual cost of processing and issuing the license.

14 (7) A fee may be charged to a licensee requesting a
15 duplicate license. The fee may not exceed the actual cost of
16 duplication and postage.

17 (8) Total fees collected may not exceed the cost of
18 carrying out the provisions of this part, authorizing
19 statutes, or applicable rules.

20 408.806 License application process.--

21 (1) An application for licensure must be made to the
22 agency on forms furnished by the agency, submitted under oath,
23 and accompanied by the appropriate license fee in order to be
24 accepted and considered timely. The application must contain
25 information required by authorizing statutes and applicable
26 rules and must include:

27 (a) The name, address, and social security number of
28 the applicant and each controlling interest if the applicant
29 or controlling interest is an individual.

30 (b) The name, address, and federal employer
31 identification number or taxpayer identification number of the

1 applicant and each controlling interest if the applicant or
2 controlling interest is not an individual.

3 (c) The name by which the provider is to be known.

4 (d) The total number of beds or capacity requested, as
5 applicable.

6 (e) The location of the provider for which application
7 is made, a report or letter from the zoning authority
8 indicating the location is zoned appropriately for its use,
9 and a satisfactory fire safety report from the local authority
10 having jurisdiction or the state fire marshal. If the provider
11 is a community residential home under chapter 419, the zoning
12 requirement must be satisfied by proof of compliance with
13 chapter 419.

14 (f) The name of the person or persons under whose
15 management or supervision the provider will be operated and
16 the name of the administrator if required.

17 (g) Any information that the agency finds is necessary
18 to determine the ability of the applicant to carry out its
19 responsibilities, including inspection, under this part and
20 authorizing statutes, as specified in rule.

21 (2)(a) The applicant for a renewal license must submit
22 an application that must be received by the agency at least 60
23 days prior to the expiration of the current license.

24 (b) The applicant for initial licensure due to a
25 change of ownership must submit an application that must be
26 received by the agency at least 60 days prior to the date of
27 change of ownership.

28 (c) For any other application or request, the
29 applicant must submit an application or request that must be
30 received by the agency at least 60 days prior to the requested
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1 effective date, unless otherwise specified in authorizing
2 statutes or rules.

3 (3) Upon receipt of an application for a license, the
4 agency shall examine the application and, within 30 days after
5 receipt, notify the applicant in writing of any apparent
6 errors or omissions and request any additional information
7 required.

8 (4) Requested information omitted from an application
9 for licensure, license renewal, or change of ownership, other
10 than an inspection, must be filed with the agency within 21
11 days after the agency's request for omitted information, or
12 the application shall be deemed incomplete, and shall be
13 withdrawn from further consideration and the fees forfeited.

14 (5) Licensees subject to the provisions of this part
15 shall be issued biennial licenses unless conditions of the
16 license category specify a shorter license period. The agency
17 may not issue an initial license to a health care provider
18 subject to the certificate-of-need provisions in ss.
19 408.031-408.045 if the licensee has not been issued a
20 certificate of need or exemption, when applicable. The agency
21 may issue an initial license for less than the full 2-year
22 period by charging a prorated licensure fee and specifying a
23 different renewal date than would otherwise be required for
24 biennial licensure. Failure to apply for the renewal of a
25 license prior to the expiration date renders the license null
26 and void and the former licensee may not be issued a new
27 license unless the licensee reapplies for an initial license
28 and meets all current qualifications for licensure, including
29 construction standards for facilities where applicable and
30 complies with certificate-of-need requirements if the
31 applicant is subject to the provisions of ss. 408.031-408.045.

1 (6) The failure to file a timely application and
2 license fee shall result in a late fee charged to the licensee
3 in an amount equal to 50 percent of the licensure fee. If a
4 renewal application is not received by the agency 60 days in
5 advance of the license expiration date, the agency shall
6 notify the licensee of this late fee within 10 days after the
7 date the renewal application was due.

8 (7) Within 60 days after the receipt of a complete
9 application, the agency shall approve or deny the application.

10 (8) Each license issued shall indicate the name of the
11 licensee, the provider or service that the licensee is
12 required or authorized to operate or offer, the date the
13 license is issued, the expiration date of the license, the
14 maximum capacity of the licensed premises if applicable, and
15 any other information required by authorizing statutes or
16 deemed necessary by the agency.

17 (9)(a) An initial inspection is not required for
18 companion services or homemaker services providers, as
19 provided under part IV of chapter 400 or for health care
20 services pools, as provided under part XII of chapter 400.

21 (b) If an inspection is required by the authorizing
22 statute for a license application other than an initial
23 application, the inspection must be unannounced. This
24 paragraph does not apply to inspections required pursuant to
25 ss. 483.035, 395.0161(4), and 383.324(3).

26 (c) If a provider is not available when an inspection
27 is attempted, the application shall be withdrawn from further
28 consideration.

29 (10) The agency may establish procedures for the
30 electronic submission of required information, including, but
31 not limited to:

1 (a) Licensure applications and required signatures.

2 (b) Payment of fees.

3 (c) Notarization of applications.

4

5 Requirements for electronic submission of any documents
6 required by this part or authorizing statutes may be
7 established by rule.

8 408.807 Change of ownership.--Whenever a change of
9 ownership occurs:

10 (1) The transferor shall notify the agency in writing
11 at least 60 days before the anticipated date of transfer of
12 ownership.

13 (2) The transferee shall make application to the
14 agency for a license within the timeframes required in s.
15 408.806.

16 (3) The transferor shall be responsible and liable
17 for:

18 (a) The lawful operation of the provider and the
19 welfare of the clients served until the date the transferee is
20 licensed by the agency.

21 (b) Any and all penalties imposed against the
22 transferor for violations occurring before the date of change
23 of ownership.

24 (4) Any restriction on licensure, including a
25 conditional license existing at the time of a change of
26 ownership, shall remain in effect until removed by the agency.

27 (5) The transferee shall maintain records of the
28 transferor as required in this part, authorizing statutes, and
29 applicable rules including:

30 (a) All client records.

31 (b) Inspection reports.

1 (c) All records required to be maintained pursuant to
2 409.913, if applicable.

3 408.808 License categories.--

4 (1) STANDARD LICENSE.--A standard license may be
5 issued at the time of initial licensure, license renewal, or
6 change of ownership. A standard license shall be issued when
7 the applicant is in compliance with all statutory requirements
8 and agency rules. Unless sooner revoked, a standard license
9 expires 2 years following the date of issue.

10 (2) PROVISIONAL LICENSE.--A provisional license may be
11 issued:

12 (a) Pursuant to s. 408.809(3).

13 (b) When the applicant is in substantial compliance
14 with statutory requirements and applicable rules. A
15 provisional license for this purpose shall be issued for a
16 maximum of 1 year and may not be renewed.

17 (c) When a denial or revocation proceeding is pending,
18 a provisional license for this purpose is effective until
19 final agency disposition of the proceeding. If judicial relief
20 is sought from the final agency disposition, the court having
21 jurisdiction may require the agency to issue a temporary
22 license for the duration of the judicial proceeding.

23 (3) INACTIVE LICENSE.--An inactive license may be
24 issued to a health care provider subject to the
25 certificate-of-need provisions in ss. 408.031-408.045 when the
26 provider will be temporarily unable to provide services but is
27 reasonably expected to resume services within 12 months. Such
28 designation may be made for a period not to exceed 12 months
29 but may be renewed by the agency for up to 6 additional months
30 upon demonstration by the licensee of the provider's progress
31 toward reopening. Any request by a licensee for an inactive

1 license or to extend the previously approved inactive period
2 must be submitted to the agency, accompanied by written
3 justification for the inactive license with the beginning and
4 ending dates of inactivity, including a plan for the transfer
5 of any clients to other providers, and the appropriate
6 licensure fees. The agency may not accept a request that is
7 submitted after initiating closure, after any suspension of
8 service, or after notifying clients of closure or suspension
9 of service. Upon agency approval, the provider shall notify
10 clients of any necessary discharge or transfer as required by
11 authorizing statutes. The beginning of the inactive license
12 shall be the date the provider ceases operations. The end of
13 the inactive period shall become the license expiration date
14 and all licensure fees must be current, paid in full, and may
15 be prorated. Reactivation of an inactive license requires the
16 approval of a renewal application, including payment of
17 licensure fees and agency inspections indicating compliance
18 with all requirements of this part, authorizing statutes, and
19 applicable rules.

20 (4) OTHER LICENSES.--Other licensure types may be
21 issued pursuant to authorizing statutes.

22 408.809 Background screening; prohibited offenses.--

23 (1) Level 2 background screening pursuant to chapter
24 435 must be conducted through the agency on each of the
25 following persons, who shall be considered an employee for the
26 purposes of conducting screening under chapter 435:

27 (a) The licensee if an individual;

28 (b) The administrator or a similarly titled person who
29 is responsible for the day-to-day operation of the provider;

30
31

1 (c) The financial officer or similarly titled
2 individual who is responsible for the financial operation of
3 the licensee or provider; and

4 (d) Any controlling interest if the agency has reason
5 to believe that such person has been convicted of any offense
6 prohibited by s. 435.04. For each controlling interest who has
7 been convicted of any such offense, the licensee shall submit
8 to the agency a description and explanation of the conviction
9 at the time of license application.

10 (2) Proof of compliance with level 2 screening
11 standards submitted within the previous 5 years to meet any
12 provider or professional licensure requirements of the agency,
13 the Department of Health, or the Department of Children and
14 Family Services satisfies the requirements of this section,
15 provided that such proof is accompanied, under penalty of
16 perjury, by an affidavit of compliance with the provisions of
17 chapter 435. Proof of compliance with the background screening
18 requirements of the Office of Insurance Regulation for an
19 applicant for a certificate of authority to operate a
20 continuing care retirement community under chapter 651,
21 submitted within the previous 5 years, satisfies the
22 Department of Law Enforcement and Federal Bureau of
23 Investigation portions of a level 2 background check.

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

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

13 (4) When a change in the administrator of a provider
14 occurs, the licensee must notify the agency of the change
15 within the time period specified in the authorizing statute or
16 rules and must provide evidence of compliance with background
17 screening requirements of this section; except that an
18 administrator who has met the standards for the Department of
19 Law Enforcement background check, but for whom background
20 screening results from the Federal Bureau of Investigation
21 have not yet been received, may be employed pending a receipt
22 of the Federal Bureau of Investigation background screening
23 report. An individual may not continue to serve as
24 administrator if the Federal Bureau of Investigation
25 background screening report indicates any violation of
26 background screening standards.

27 (5) Background screening is not required to obtain a
28 certificate of exemption issued under s. 483.106.

29 408.810 Minimum licensure requirements.--In addition
30 to the licensure requirements specified in chapter 112,
31 chapter 383, chapter 390, chapter 394, chapter 395, chapter

1 400, chapter 440, or chapter 483, each applicant for licensure
2 by the Agency for Health Care Administration must comply with
3 the requirements of this section in order to obtain and
4 maintain a license.

5 (1) An applicant for licensure must comply with
6 background screening requirements of s. 408.809.

7 (2) An applicant for licensure must provide a
8 description and explanation of any exclusions, suspensions, or
9 terminations of the applicant from the Medicare, Medicaid, or
10 federal Clinical Laboratory Improvement Amendments (CLIA)
11 programs.

12 (3) Unless otherwise specified in this part,
13 authorizing statutes, or applicable rules, any information
14 required to be reported to the agency must be submitted within
15 10 calendar days after the report period or effective date of
16 the information.

17 (4) Whenever a licensee discontinues operation of a
18 provider:

19 (a) The licensee must inform the agency not less than
20 30 days prior to the discontinuance of operation and inform
21 clients of discharge as required by authorizing statutes.
22 Immediately upon discontinuance of operation of a provider,
23 the licensee shall surrender the license to the agency and the
24 license shall be canceled.

25 (b) Upon final discharge of clients, each client shall
26 be given his or her records. Upon closure of a provider, the
27 licensee shall remain responsible for retaining and
28 appropriately distributing all records within the timeframes
29 prescribed in authorizing statutes and applicable rules. In
30 addition, the licensee or, in the event of death or
31

1 dissolution of a licensee, the estate or agent of the licensee
2 shall:

3 1. Make arrangements to forward records for each
4 client to one of the following, based upon the client's
5 choice: the client or the client's legal representative, the
6 client's attending physician, or the health care provider
7 where the client currently receives services; or

8 2. Cause a notice to be published in the newspaper of
9 greatest general circulation in the county where the provider
10 was located which advises clients of the discontinuance of the
11 provider operation. The notice must inform clients that they
12 may obtain copies of their records and specify the name,
13 address, and telephone number of the person from whom the
14 copies of records may be obtained. The notice must appear at
15 least once a week for 4 consecutive weeks.

16
17 Failure to comply with this paragraph is a misdemeanor of the
18 second degree, punishable as provided in s. 775.083.

19 (5)(a) On or before the first day services are
20 provided to a client, a licensee must inform the client and
21 his or her immediate family or representative, if appropriate,
22 of the right to report:

23 1. Complaints. The statewide toll-free telephone
24 number for reporting complaints to the agency must be provided
25 to clients in a manner that is clearly legible and must
26 include the words: "To report a complaint regarding the
27 services you receive, please call toll free (phone number)".

28 2. Abusive, neglectful, or exploitative practices. The
29 statewide toll-free telephone number for the central abuse
30 hotline must be provided to clients in a manner that is
31 clearly legible and must include the words: "To report abuse,

1 neglect, or exploitation, please call toll-free (phone
2 number)."

3
4 The agency shall publish a minimum of a 90-day advance notice
5 of a change in the toll-free telephone numbers.

6 (b) Each licensee shall establish appropriate policies
7 and procedures for providing such notice to clients.

8 (6) An applicant must provide the agency with proof of
9 the applicant's legal right to occupy the property before a
10 license may be issued. Proof may include, but need not be
11 limited to, copies of warranty deeds, lease or rental
12 agreements, contracts for deeds, quitclaim deeds, or other
13 such documentation.

14 (7) An applicant shall provide proof of liability
15 insurance as defined in chapter 624, unless defined otherwise
16 in authorizing statute.

17 (8) Upon application for initial licensure or
18 change-of-ownership licensure, the applicant shall furnish
19 satisfactory proof of the applicant's financial ability to
20 operate in accordance with the requirements of this part,
21 authorizing statutes, and applicable rules. The agency shall
22 establish standards for this purpose, including information
23 concerning the applicant's controlling interests. The agency
24 also shall establish documentation requirements, to be
25 completed by each applicant, that show anticipated provider
26 revenues and expenditures, the basis for financing the
27 anticipated cash-flow requirements of the provider, and an
28 applicant's access to contingency financing. A current
29 certificate of authority, pursuant to chapter 651, may be
30 provided as proof of financial ability to operate. The agency
31 may require a licensee to provide proof of financial ability

1 to operate at any time if there is evidence of financial
2 instability, including, but not limited to, unpaid expenses
3 necessary for the basic operations of the provider.

4 (9) A licensee or controlling interest may not
5 withhold from the agency any evidence of financial
6 instability, including, but not limited to, checks returned
7 due to insufficient funds, delinquent accounts, nonpayment of
8 withholding taxes, unpaid utility expenses, nonpayment for
9 essential services, or adverse court action concerning the
10 financial viability of the provider or any other provider
11 licensed under this part which is under the control of the
12 licensee. Any person found guilty of violating this subsection
13 commits a misdemeanor of the second degree, punishable as
14 provided in s. 775.083. Each day of continuing violation is a
15 separate offense.

16 (10) The agency may not issue a license to a health
17 care provider subject to the certificate of need provisions in
18 ss. 408.031-408.045 if the licensee has not been issued a
19 certificate of need or an exemption. Upon initial licensure of
20 any such provider, the authorization contained in the
21 certificate of need shall be considered fully implemented and
22 merged into the license, and shall have no force and effect
23 upon termination of the license for any reason.

24 408.811 Right of inspection; copies; inspection
25 reports.--

26 (1) An authorized officer or employee of the agency
27 may make or cause to be made any inspections and
28 investigations as the agency deems necessary to determine the
29 state of compliance with this part, authorizing statutes, and
30 applicable rules. The right of inspection extends to any
31 business that the agency has reason to believe is being

1 operated as a provider without a license, but inspection of
2 any business suspected of being operated without the
3 appropriate license may not be made without the permission of
4 the owner or person in charge unless a warrant is first
5 obtained from a circuit court. Any application for a license
6 issued under this part, authorizing statutes, or applicable
7 rules constitutes permission for an appropriate inspection to
8 verify the information submitted on or in connection with the
9 application.

10 (a) All inspections shall be unannounced, except as
11 specified in s. 408.806.

12 (b) Inspections for relicensure shall be conducted
13 biennially unless otherwise specified by authorizing statutes
14 or applicable rules.

15 (2) Inspections conducted in conjunction with
16 certification may be accepted in lieu of a complete licensure
17 inspection. However, a licensure inspection may also be
18 conducted to review any licensure requirements that are not
19 also requirements of certification.

20 (3) The agency shall have access to and the licensee
21 shall provide copies of all provider records required during
22 an inspection at no cost to the agency.

23 (4)(a) Unless exempt from s. 119.07(1), each licensee
24 shall maintain as public information, available upon request,
25 records of all inspection reports pertaining to that provider
26 which have been filed with, or issued by, any governmental
27 agency. Effective July 1, 2004, copies of such reports shall
28 be retained in the records of the provider for at least 5
29 years following the date the reports are filed and issued,
30 regardless of a change of ownership.

31

1 (b) A licensee shall, upon the request of any person
2 who has completed a written application with intent to be
3 admitted by such provider or any person who is a patient of
4 such provider, or any relative, spouse, or guardian of any
5 such person, furnish to the requester a copy of the last
6 inspection report pertaining to the licensed provider which
7 was issued by the agency or by an accrediting organization if
8 such report is used in lieu of a licensure inspection.

9 408.812 Unlicensed activity.--

10 (1) A person may not offer or advertise to the public
11 services as defined by this part, authorizing statutes, or
12 application rules without obtaining a valid license from the
13 Agency for Health Care Administration. The holder of a license
14 may not advertise or hold out to the public that he or she
15 holds a license for other than that for which he or she
16 actually holds a license.

17 (2) The operation or maintenance of an unlicensed
18 provider or the performance of any services that necessitate
19 licensure is a violation of this part and authorizing
20 statutes. Unlicensed activity constitutes harm that materially
21 affects the health, safety, and welfare of clients. The
22 agency, or any state attorney, may, in addition to other
23 remedies provided in this part, bring an action for an
24 injunction to restrain such violation, or to enjoin the future
25 operation or maintenance of any such provider or the provision
26 of services that necessitate licensure in violation of this
27 part and authorizing statutes, until compliance with this
28 part, authorizing statutes, and agency rules has been
29 demonstrated to the satisfaction of the agency.

30 (3) Any person who owns, operates, or maintains an
31 unlicensed provider and who, after receiving notification from

1 the agency, fails to cease operation and apply for a license
2 under this part and authorizing statutes commits a felony of
3 the third degree, punishable as provided in s. 775.082, s.
4 775.083, or s. 775.084. Each day of continued operation is a
5 separate offense.

6 (4) Any person found guilty of violating subsection
7 (3) a second or subsequent time commits a felony of the second
8 degree, punishable as provided under s. 775.082, s. 775.083,
9 or s. 775.084. Each day of continued operation is a separate
10 offense.

11 (5) Any provider that fails to cease operation after
12 agency notification may be fined \$1,000 for each day of
13 noncompliance.

14 (6) When a licensee has an interest in more than one
15 provider and fails to license any provider rendering services
16 that necessitate licensure, the agency may revoke all
17 licenses, impose actions under s. 408.814, or impose a fine of
18 \$1,000 unless otherwise specified by authorizing statutes
19 against the licensee until such time as the licensee becomes
20 appropriately licensed.

21 (7) In addition to injunctive relief pursuant to
22 subsection (2), if the agency determines that an owner is
23 operating or maintaining a provider without obtaining a
24 license and determines that a condition exists that poses a
25 threat to the health, safety, or welfare of a client of the
26 provider, the owner is subject to the same actions and fines
27 imposed against a licensed provider as specified in this part,
28 the authorizing statute, and agency rules.

29 (8) Any person aware of the operation of an unlicensed
30 provider must report that provider and operation to the
31 agency.

1 408.813 Administrative fines.--As a penalty for any
2 violation of this part, authorizing statutes, or applicable
3 rules, the agency may impose an administrative fine. Unless
4 the amount of the fine is prescribed by authorizing statutes
5 or applicable rules, the agency may establish criteria for the
6 amount of administrative fines applicable to this part,
7 authorizing statutes, and applicable rules. Each day of
8 violation constitutes a separate violation and is subject to a
9 separate fine. For fines that are upheld following
10 administrative or judicial review, the violator shall pay the
11 fine, plus interest at the rate as specified in s. 55.03 for
12 each day beyond the date set by the agency for payment of the
13 fine.

14 408.814 Moratoriums; emergency suspensions.--

15 (1) The agency may impose an immediate moratorium or
16 emergency suspension as defined in s. 120.60 on any provider
17 if the agency determines that any condition related to the
18 provider presents a threat to the health, safety, or welfare
19 of the clients.

20 (2) A provider, the license of which is denied or
21 revoked, may be subject to immediate imposition of a
22 moratorium or emergency suspension to run concurrently with
23 licensure denial, revocation, or injunction.

24 (3) A moratorium or emergency suspension remains in
25 effect after a change of ownership, unless the agency has
26 determined that the conditions that created the moratorium,
27 emergency suspension, or denial of licensure have been
28 corrected.

29 (4) When a moratorium or emergency suspension is
30 placed on a provider, notice of the action shall be posted and
31

1 visible to the public at the location of the provider until
2 the action is lifted.

3 (5) The agency may by rule establish conditions that
4 constitute grounds for imposing a moratorium or emergency
5 suspension on a provider and procedures for imposing and
6 lifting an action as necessary to administer this section.

7 408.815 License denial; revocation.--

8 (1) In addition to grounds in authorizing statutes,
9 grounds for denying or revoking a license or application
10 include any of the following actions by a controlling
11 interest:

12 (a) False representation of a material fact in the
13 license application or omission of any material fact from the
14 application.

15 (b) An intentional or negligent act materially
16 affecting the health or safety of clients of the provider.

17 (c) A violation of this part, authorizing statutes, or
18 applicable rules.

19 (d) A demonstrated pattern of deficient performance.

20 (e) The applicant, licensee, or controlling interest
21 has been or is currently excluded, suspended, terminated from,
22 or has involuntarily withdrawn from participation in the state
23 Medicaid program, the Medicaid program of any other state, or
24 the Medicare program or any other governmental or private
25 health care or health insurance program.

26 (2) If a licensee lawfully continues to operate while
27 a denial or revocation is pending in litigation, the licensee
28 must continue to meet all other requirements of this part,
29 authorizing statutes, and applicable rules, and must file
30 subsequent renewal applications for licensure, including
31 licensure fees. Notwithstanding chapter 120, the agency may

1 withhold a final decision on any application or request filed
2 during this period until final agency action.

3 (3) An action under s. 408.814, or denial of the
4 license of the transferor, may be grounds for denial of a
5 change-of-ownership application of the transferee.

6 408.816 Injunctions.--

7 (1) In addition to the other powers provided by this
8 part and authorizing statutes, the agency may:

9 (a) Institute injunction proceedings in a court of
10 competent jurisdiction to restrain or prevent the
11 establishment or operation of a provider that does not have a
12 license or is in violation of any provision of this part,
13 authorizing statutes, or applicable rules. The agency may also
14 institute injunction proceedings in a court of competent
15 jurisdiction when a violation of this part, authorizing
16 statutes, or applicable rules constitutes an emergency
17 affecting the immediate health and safety of a client.

18 (b) Enforce the provisions of this part, authorizing
19 statutes, or any minimum standard, rule, or order issued or
20 entered into pursuant thereto when the attempt by the agency
21 to correct a violation through administrative sanctions has
22 failed or when the violation materially affects the health,
23 safety, or welfare of clients or involves any operation of an
24 unlicensed provider.

25 (c) Terminate the operation of a provider when a
26 violation of any provision of this part, authorizing statutes,
27 or any standard or rule adopted pursuant thereto exist that
28 materially affect the health, safety, or welfare of clients.

29 (2) Such injunctive relief may be temporary or
30 permanent.

31

1 (3) If action is necessary to protect clients of
2 providers from immediate, life-threatening situations, the
3 court may allow a temporary injunction without bond upon
4 proper proof being made. If it appears by competent evidence
5 or a sworn, substantiated affidavit that a temporary
6 injunction should be issued, the court, pending the
7 determination on final hearing, shall enjoin the operation of
8 the provider.

9 408.817 Administrative proceedings.--Administrative
10 proceedings challenging agency licensure enforcement action
11 shall be reviewed on the basis of the facts and conditions
12 that resulted in the agency action.

13 408.818 Health Care Trust Fund.--Unless otherwise
14 prescribed by authorizing statutes, all fees and fines
15 collected pursuant to this part, authorizing statutes, and
16 applicable rules shall be deposited into the Health Care Trust
17 Fund, created in s. 408.16, and used to pay the costs of the
18 agency in administering the provider program paying the fees
19 or fines.

20 408.819 Rules.--The agency may adopt rules necessary
21 to administer this part. Any licensed provider that is in
22 operation at the time of adoption of any applicable rule under
23 this part or authorizing statutes shall be given a reasonable
24 time under the particular circumstances, not to exceed 6
25 months after the date of such adoption, within which to comply
26 with such rule, unless otherwise specified by rule.

27 Section 6. Subsection (12), paragraph (a) of
28 subsection (13), and subsection (17) of section 112.0455,
29 Florida Statutes, are amended to read:

30 112.0455 Drug-Free Workplace Act.--

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

1 (a) The requirements of ss. 408.801-408.819 apply to
2 the provision of services that necessitate licensure pursuant
3 to this section and part II of chapter 408 and to entities
4 licensed by or applying for such licensure from the Agency for
5 Health Care Administration pursuant to this section.

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

8 1. The laboratory is licensed and approved by the
9 Agency for Health Care Administration using criteria
10 established by the United States Department of Health and
11 Human Services as general guidelines for modeling the state
12 drug testing program and in accordance with part II of chapter
13 408. Each applicant for licensure must comply with all
14 requirements of part II of chapter 408, with the exception of
15 s. 408.810(5)-(10).~~the following requirements:~~

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

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

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

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

28 ~~e. Each applicant must submit to the agency, with its~~
29 ~~application, a description and explanation of any exclusions,~~
30 ~~permanent suspensions, or terminations of the applicant from~~
31 ~~the Medicare or Medicaid programs. Proof of compliance with~~

1 ~~the requirements for disclosure of ownership and control~~
2 ~~interests under the Medicaid or Medicare programs shall be~~
3 ~~accepted in lieu of this submission.~~

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

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

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

31

1 ~~(I) Has falsely represented a material fact in the~~
2 ~~application required by sub-subparagraph e. or~~
3 ~~sub-subparagraph f., or has omitted any material fact from the~~
4 ~~application required by sub-subparagraph e. or~~
5 ~~sub-subparagraph f.; or~~

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

9 ~~i. An application for license renewal must contain the~~
10 ~~information required under sub-subparagraphs e. and f.~~

11 2. The laboratory has written procedures to ensure
12 chain of custody.

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

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

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

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

25 d. Other necessary and proper actions taken to ensure
26 reliable and accurate drug test results.

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

31

1 1. The name and address of the laboratory which
2 performed the test and the positive identification of the
3 person tested.

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

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

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

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

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

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

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

1 (13) RULES.--

2 (a) The Agency for Health Care Administration may
3 adopt additional rules to support this law and part II of
4 chapter 408, using criteria established by the United States
5 Department of Health and Human Services as general guidelines
6 for modeling drug-free workplace laboratories ~~the state~~
7 ~~drug-testing program~~, concerning, but not limited to:

8 1. Standards for drug-testing laboratory licensing and
9 denial, ~~suspension~~, and revocation of a license.

10 2. Urine, hair, blood, and other body specimens and
11 minimum specimen amounts which are appropriate for drug
12 testing, not inconsistent with other provisions established by
13 law.

14 3. Methods of analysis and procedures to ensure
15 reliable drug-testing results, including standards for initial
16 tests and confirmation tests, not inconsistent with other
17 provisions established by law.

18 4. Minimum cutoff detection levels for drugs or their
19 metabolites for the purposes of determining a positive test
20 result, not inconsistent with other provisions established by
21 law.

22 5. Chain-of-custody procedures to ensure proper
23 identification, labeling, and handling of specimens being
24 tested, not inconsistent with other provisions established by
25 law.

26 6. Retention, storage, and transportation procedures
27 to ensure reliable results on confirmation tests and retests.

28 7. A list of the most common medications by brand name
29 or common name, as applicable, as well as by chemical name,
30 which may alter or affect a drug test.

31

1 (17) LICENSE FEE.--Fees from licensure of drug-testing
2 laboratories shall be sufficient to carry out the
3 responsibilities of the Agency for Health Care Administration
4 for the regulation of drug-testing laboratories. In accordance
5 with s. 408.805, an applicant or licensee shall pay a fee for
6 each license application submitted under this part and part II
7 of chapter 408. The fee may not be less than \$16,000 or more
8 than \$20,000 per biennium and shall be established by rule.
9 ~~The Agency for Health Care Administration shall collect fees~~
10 ~~for all licenses issued under this part. Each nonrefundable~~
11 ~~fee shall be due at the time of application and shall be~~
12 ~~payable to the Agency for Health Care Administration to be~~
13 ~~deposited in a trust fund administered by the Agency for~~
14 ~~Health Care Administration and used only for the purposes of~~
15 ~~this section. The fee schedule is as follows: For licensure~~
16 ~~as a drug-testing laboratory, an annual fee of not less than~~
17 ~~\$8,000 or more than \$10,000 per fiscal year; for late filing~~
18 ~~of an application for renewal, an additional fee of \$500 per~~
19 ~~day shall be charged.~~

20 Section 7. Section 383.301, Florida Statutes, is
21 amended to read:

22 383.301 Licensure and regulation of birth centers;
23 legislative intent.--It is the intent of the Legislature to
24 provide for the protection of public health and safety in the
25 establishment, maintenance, and operation of birth centers by
26 providing for licensure of birth centers and for the
27 development, establishment, and enforcement of minimum
28 standards with respect to birth centers. The requirements of
29 part II of chapter 408 apply to the provision of services that
30 necessitate licensure pursuant to ss. 383.30-383.335 and part
31 II of chapter 408 and to entities licensed by or applying for

1 such licensure from the Agency for Health Care Administration
2 pursuant to ss. 383.30-383.335.

3 Section 8. Section 383.304, Florida Statutes, is
4 repealed.

5 Section 9. Section 383.305, Florida Statutes, is
6 amended to read:

7 383.305 Licensure; ~~issuance, renewal, denial,~~
8 ~~suspension, revocation; fees; background screening.--~~

9 (1) In accordance with s. 408.805, an applicant or
10 licensee shall pay a fee for each license application
11 submitted under this part and part II of chapter 408. The
12 amount of the fee shall be established by rule.

13 ~~(1)(a) Upon receipt of an application for a license~~
14 ~~and the license fee, the agency shall issue a license if the~~
15 ~~applicant and facility have received all approvals required by~~
16 ~~law and meet the requirements established under ss.~~
17 ~~383.30-383.335 and by rules promulgated hereunder.~~

18 ~~(b) A provisional license may be issued to any birth~~
19 ~~center that is in substantial compliance with ss.~~
20 ~~383.30-383.335 and with the rules of the agency. A~~
21 ~~provisional license may be granted for a period of no more~~
22 ~~than 1 year from the effective date of rules adopted by the~~
23 ~~agency, shall expire automatically at the end of its term, and~~
24 ~~may not be renewed.~~

25 ~~(c) A license, unless sooner suspended or revoked,~~
26 ~~automatically expires 1 year from its date of issuance and is~~
27 ~~renewable upon application for renewal and payment of the fee~~
28 ~~prescribed, provided the applicant and the birth center meet~~
29 ~~the requirements established under ss. 383.30-383.335 and by~~
30 ~~rules promulgated hereunder. A complete application for~~

31

1 ~~renewal of a license shall be made 90 days prior to expiration~~
2 ~~of the license on forms provided by the agency.~~

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

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

14 ~~(b) The fees established pursuant to ss.~~
15 ~~383.30-383.335 shall be based on actual costs incurred by the~~
16 ~~agency in the administration of its duties under such~~
17 ~~sections.~~

18 ~~(4) Each license is valid only for the person or~~
19 ~~governmental unit to whom or which it is issued; is not~~
20 ~~subject to sale, assignment, or other transfer, voluntary or~~
21 ~~involuntary; and is not valid for any premises other than~~
22 ~~those for which it was originally issued.~~

23 ~~(5) Each license shall be posted in a conspicuous~~
24 ~~place on the licensed premises.~~

25 ~~(6) Whenever the agency finds that there has been a~~
26 ~~substantial failure to comply with the requirements~~
27 ~~established under ss. 383.30-383.335 or in rules adopted under~~
28 ~~those sections, it is authorized to deny, suspend, or revoke a~~
29 ~~license.~~

30
31

1 (2)(7) Each applicant for licensure must comply with
2 the following requirements of part II of chapter 408, with the
3 exception of s. 408.810(7)-(10).+

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

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

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

25 ~~(d) A provisional license may be granted to an~~
26 ~~applicant when each individual required by this section to~~
27 ~~undergo background screening has met the standards for the~~
28 ~~Department of Law Enforcement background check, but the agency~~
29 ~~has not yet received background screening results from the~~
30 ~~Federal Bureau of Investigation, or a request for a~~
31 ~~disqualification exemption has been submitted to the agency as~~

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

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

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

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

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

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

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

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

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

28 Section 10. Section 383.309, Florida Statutes, is
29 amended to read:

30 383.309 Minimum standards for birth centers; rules and
31 enforcement.--

1 (1) The agency shall adopt and enforce rules to
2 administer ss. 383.30-383.335 and part II of chapter 408,
3 which rules shall include, but are not limited to, reasonable
4 and fair minimum standards for ensuring that:

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

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

13 (c) Licensed facilities are established, organized,
14 and operated consistent with established programmatic
15 standards.

16 ~~(2) Any licensed facility that is in operation at the~~
17 ~~time of adoption of any applicable rule under ss.~~
18 ~~383.30-383.335 shall be given a reasonable time under the~~
19 ~~particular circumstances, not to exceed 1 year after the date~~
20 ~~of such adoption, within which to comply with such rule.~~

21 (2)(3) The agency may not establish any rule governing
22 the design, construction, erection, alteration, modification,
23 repair, or demolition of birth centers. It is the intent of
24 the Legislature to preempt that function to the Florida
25 Building Commission and the State Fire Marshal through
26 adoption and maintenance of the Florida Building Code and the
27 Florida Fire Prevention Code. However, the agency shall
28 provide technical assistance to the commission and the State
29 Fire Marshal in updating the construction standards of the
30 Florida Building Code and the Florida Fire Prevention Code
31 which govern birth centers. In addition, the agency may

1 enforce the special-occupancy provisions of the Florida
2 Building Code and the Florida Fire Prevention Code which apply
3 to birth centers in conducting any inspection authorized under
4 this chapter.

5 Section 11. Subsection (1) of section 383.315, Florida
6 Statutes, is amended to read:

7 383.315 Agreements with consultants for advice or
8 services; maintenance.--

9 (1) A birth center shall maintain in writing a
10 consultation agreement, signed within the current license
11 period year, with each consultant who has agreed to provide
12 advice and services to the birth center as requested.

13 Section 12. Section 383.324, Florida Statutes, is
14 amended to read:

15 383.324 ~~Inspections and investigations;~~ Inspection
16 fees.--

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

19 ~~(2)~~ Each facility licensed under s. 383.305 shall pay
20 to the agency, at the time of inspection, an inspection fee
21 established by rule of the agency.

22 ~~(3) The agency shall coordinate all periodic~~
23 ~~inspections for licensure made by the agency to ensure that~~
24 ~~the cost to the facility of such inspections and the~~
25 ~~disruption of services by such inspections is minimized.~~

26 Section 13. Section 383.325, Florida Statutes, is
27 repealed.

28 Section 14. Section 383.33, Florida Statutes, is
29 amended to read:

30 383.33 Administrative fines ~~penalties;~~ emergency
31 ~~orders;~~ moratorium on admissions.--

1 (1)~~(a)~~ In addition to the requirements of part II of
2 chapter 408, the agency may ~~deny, revoke, or suspend a~~
3 ~~license, or impose an administrative fine,~~ not to exceed \$500
4 per violation per day, for the violation of any provision of
5 ss. 383.30-383.335, part II of chapter 408, or applicable
6 rules or any rule adopted under ss. 383.30-383.335. Each day
7 ~~of violation constitutes a separate violation and is subject~~
8 ~~to a separate fine.~~

9 (2)~~(b)~~ In determining the amount of the fine to be
10 levied for a violation, as provided in paragraph (a), the
11 following factors shall be considered:

12 (a)1. The severity of the violation, including the
13 probability that death or serious harm to the health or safety
14 of any person will result or has resulted; the severity of the
15 actual or potential harm; and the extent to which the
16 provisions of ss. 383.30-383.335, part II of chapter 408, or
17 applicable rules were violated.

18 (b)2. Actions taken by the licensee to correct the
19 violations or to remedy complaints.

20 (c)3. Any previous violations by the licensee.

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

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

30 ~~(3) The agency may impose an immediate moratorium on~~
31 ~~elective admissions to any licensed facility, building or~~

1 ~~portion thereof, or service when the agency determines that~~
2 ~~any condition in the facility presents a threat to the public~~
3 ~~health or safety.~~

4 Section 15. Sections 383.331 and 383.332, Florida
5 Statutes, are repealed.

6 Section 16. Subsection (1) of section 383.335, Florida
7 Statutes, is amended to read:

8 383.335 Partial exemptions.--

9 (1) Any facility that ~~which~~ was providing obstetrical
10 and gynecological surgical services and was owned and operated
11 by a board-certified obstetrician on June 15, 1984, and that
12 ~~which~~ is otherwise subject to licensure under ss.

13 383.30-383.335 as a birth center, is exempt from the
14 provisions of ss. 383.30-383.335 and part II of chapter 408
15 which restrict the provision of surgical services and outlet
16 forceps delivery and the administration of anesthesia at birth
17 centers. The agency shall adopt rules specifically related to
18 the performance of such services and the administration of
19 anesthesia at such facilities.

20 Section 17. Subsection (5) of section 390.011, Florida
21 Statutes, is amended to read:

22 390.011 Definitions.--As used in this chapter, the
23 term:

24 (5) "Hospital" means a facility defined in s. 395.002
25 and licensed under chapter 395.

26 Section 18. Subsection (1) of section 390.012, Florida
27 Statutes, is amended to read:

28 390.012 Powers of agency; rules; disposal of fetal
29 remains.--

30 (1) The agency may ~~shall have the authority to develop~~
31 and enforce rules under ss. 390.001-390.021 and part II of

1 chapter 408 for the health, care, and treatment of persons in
2 abortion clinics and for the safe operation of such clinics.
3 These rules shall be comparable to rules which apply to all
4 surgical procedures requiring approximately the same degree of
5 skill and care as the performance of first trimester
6 abortions. The rules shall be reasonably related to the
7 preservation of maternal health of the clients. The rules
8 shall not impose a legally significant burden on a woman's
9 freedom to decide whether to terminate her pregnancy. The
10 rules shall provide for:

11 (a) The performance of pregnancy termination
12 procedures only by a licensed physician.

13 (b) The making, protection, and preservation of
14 patient records, which shall be treated as medical records
15 under chapter 458.

16 Section 19. Section 390.013, Florida Statutes, is
17 repealed.

18 Section 20. Section 390.014, Florida Statutes, is
19 amended to read:

20 390.014 Licenses; fees, ~~display, etc.--~~

21 (1) The requirements of part II of chapter 408 apply
22 to the provision of services that necessitate licensure
23 pursuant to ss. 390.011-390.021 and part II of chapter 408 and
24 to entities licensed by or applying for such licensure from
25 the Agency for Health Care Administration pursuant to ss.
26 390.011-390.021. However, an applicant for licensure is exempt
27 from s. 408.810(7)-(10).~~No abortion clinic shall operate in~~
28 this state without a currently effective license issued by the
29 agency.

30 (2) A separate license shall be required for each
31 clinic maintained on separate premises, even though it is

1 operated by the same management as another clinic; but a
2 separate license shall not be required for separate buildings
3 on the same premises.

4 (3) In accordance with s. 408.805, an applicant or
5 licensee shall pay a fee for each license application
6 submitted under this part and part II of chapter 408. The fee
7 shall be established by rule and ~~The annual license fee~~
8 ~~required for a clinic shall be nonrefundable and shall be~~
9 ~~reasonably calculated to cover the cost of regulation under~~
10 ~~this chapter, but may not be less than~~\$70 or~~\$35 nor more~~
11 ~~than~~\$500 per biennium~~\$250.~~

12 (4) Counties and municipalities applying for licenses
13 under this act shall be exempt from the payment of the license
14 fees.

15 ~~(5) The license shall be displayed in a conspicuous~~
16 ~~place inside the clinic.~~

17 ~~(6) A license shall be valid only for the clinic to~~
18 ~~which it is issued, and it shall not be subject to sale,~~
19 ~~assignment, or other transfer, voluntary or involuntary. No~~
20 ~~license shall be valid for any premises other than those for~~
21 ~~which it was originally issued.~~

22 Section 21. Sections 390.015, 390.016, and 390.017,
23 Florida Statutes, are repealed.

24 Section 22. Section 390.018, Florida Statutes, is
25 amended to read:

26 390.018 Administrative fine ~~penalty in lieu of~~
27 ~~revocation or suspension.~~--In addition to the requirements of
28 part II of chapter 408 if the agency finds that one or more
29 grounds exist for the revocation or suspension of a license
30 issued to an abortion clinic, the agency may, in lieu of such
31 suspension or revocation, impose a fine upon the clinic in an

1 amount not to exceed \$1,000 for each violation of any
2 provision of this part, part II of chapter 408, or applicable
3 rules. ~~The fine shall be paid to the agency within 60 days~~
4 ~~from the date of entry of the administrative order. If the~~
5 ~~licensee fails to pay the fine in its entirety to the agency~~
6 ~~within the period allowed, the license of the licensee shall~~
7 ~~stand suspended, revoked, or renewal or continuation may be~~
8 ~~refused, as the case may be, upon expiration of such period~~
9 ~~and without any further administrative or judicial~~
10 ~~proceedings.~~

11 Section 23. Sections 390.019 and 390.021, Florida
12 Statutes, are repealed.

13 Section 24. Subsection (13) of section 394.455,
14 Florida Statutes, is amended to read:

15 394.455 Definitions.--As used in this part, unless the
16 context clearly requires otherwise, the term:

17 (13) "Hospital" means a facility defined in s. 395.002
18 and licensed under chapter 395.

19 Section 25. Section 394.67, Florida Statutes, is
20 amended to read:

21 394.67 Definitions.--As used in this part, the term:

22 (1) "Agency" means the Agency for Health Care
23 Administration.

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

29 (2)~~(3)~~ "Client" means any individual receiving
30 services in any substance abuse or mental health facility,
31 program, or service, which facility, program, or service is

1 operated, funded, or regulated by the agency and the
2 department or regulated by the agency.

3 (3)~~(4)~~ "Crisis services" means short-term evaluation,
4 stabilization, and brief intervention services provided to a
5 person who is experiencing an acute mental or emotional
6 crisis, as defined in subsection(17)~~(18)~~, or an acute
7 substance abuse crisis, as defined in subsection(18)~~(19)~~, to
8 prevent further deterioration of the person's mental health.
9 Crisis services are provided in settings such as a crisis
10 stabilization unit, an inpatient unit, a short-term
11 residential treatment program, a detoxification facility, or
12 an addictions receiving facility; at the site of the crisis by
13 a mobile crisis response team; or at a hospital on an
14 outpatient basis.

15 (4)~~(5)~~ "Crisis stabilization unit" means a program
16 that provides an alternative to inpatient hospitalization and
17 that provides brief, intensive services 24 hours a day, 7 days
18 a week, for mentally ill individuals who are in an acutely
19 disturbed state.

20 (5)~~(6)~~ "Department" means the Department of Children
21 and Family Services.

22 (6)~~(7)~~ "Director" means any member of the official
23 board of directors reported in the organization's annual
24 corporate report to the Florida Department of State, or, if no
25 such report is made, any member of the operating board of
26 directors. The term excludes members of separate, restricted
27 boards that serve only in an advisory capacity to the
28 operating board.

29 (7)~~(8)~~ "District administrator" means the person
30 appointed by the Secretary of Children and Family Services for
31

1 the purpose of administering a department service district as
2 set forth in s. 20.19.

3 (8)~~(9)~~ "District plan" or "plan" means the combined
4 district substance abuse and mental health plan approved by
5 the district administrator and governing bodies in accordance
6 with this part.

7 (9)~~(10)~~ "Federal funds" means funds from federal
8 sources for substance abuse or mental health facilities and
9 programs, exclusive of federal funds that are deemed eligible
10 by the Federal Government, and are eligible through state
11 regulation, for matching purposes.

12 (10)~~(11)~~ "Governing body" means the chief legislative
13 body of a county, a board of county commissioners, or boards
14 of county commissioners in counties acting jointly, or their
15 counterparts in a charter government.

16 (11)~~(12)~~ "Health and human services board" or "board"
17 means the board within a district or subdistrict of the
18 department which is established in accordance with s. 20.19
19 and designated in this part for the purpose of assessing the
20 substance abuse and mental health needs of the community and
21 developing a plan to address those needs.

22 (12)~~(13)~~ "Licensed facility" means a facility licensed
23 in accordance with this chapter.

24 (13)~~(14)~~ "Local matching funds" means funds received
25 from governing bodies of local government, including city
26 commissions, county commissions, district school boards,
27 special tax districts, private hospital funds, private gifts,
28 both individual and corporate, and bequests and funds received
29 from community drives or any other sources.

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1 ~~(14)~~(15) "Managing employee" means the administrator
2 or other similarly titled individual who is responsible for
3 the daily operation of the facility.

4 ~~(15)~~(16) "Mental health services" means those
5 therapeutic interventions and activities that help to
6 eliminate, reduce, or manage symptoms or distress for persons
7 who have severe emotional distress or a mental illness and to
8 effectively manage the disability that often accompanies a
9 mental illness so that the person can recover from the mental
10 illness, become appropriately self-sufficient for his or her
11 age, and live in a stable family or in the community. The term
12 also includes those preventive interventions and activities
13 that reduce the risk for or delay the onset of mental
14 disorders. The term includes the following types of services:

15 (a) Treatment services, such as psychiatric
16 medications and supportive psychotherapies, which are intended
17 to reduce or ameliorate the symptoms of severe distress or
18 mental illness.

19 (b) Rehabilitative services, which are intended to
20 reduce or eliminate the disability that is associated with
21 mental illness. Rehabilitative services may include assessment
22 of personal goals and strengths, readiness preparation,
23 specific skill training, and assistance in designing
24 environments that enable individuals to maximize their
25 functioning and community participation.

26 (c) Support services, which include services that
27 assist individuals in living successfully in environments of
28 their choice. Such services may include income supports,
29 social supports, housing supports, vocational supports, or
30 accommodations related to the symptoms or disabilities
31 associated with mental illness.

1 (d) Case management services, which are intended to
2 assist individuals in obtaining the formal and informal
3 resources that they need to successfully cope with the
4 consequences of their illness. Resources may include treatment
5 or rehabilitative or supportive interventions by both formal
6 and informal providers. Case management may include an
7 assessment of client needs; intervention planning with the
8 client, his or her family, and service providers; linking the
9 client to needed services; monitoring service delivery;
10 evaluating the effect of services and supports; and advocating
11 on behalf of the client.

12
13 Mental health services may be delivered in a variety of
14 settings, such as inpatient, residential, partial hospital,
15 day treatment, outpatient, club house, or a drop-in or
16 self-help center, as well as in other community settings, such
17 as the client's residence or workplace. The types and
18 intensity of services provided shall be based on the client's
19 clinical status and goals, community resources, and
20 preferences. Services such as assertive community treatment
21 involve all four types of services which are delivered by a
22 multidisciplinary treatment team that is responsible for
23 identified individuals who have a serious mental illness.

24 (16)~~(17)~~ "Patient fees" means compensation received by
25 a community substance abuse or mental health facility for
26 services rendered to a specific client from any source of
27 funds, including city, county, state, federal, and private
28 sources.

29 (17)~~(18)~~ "Person who is experiencing an acute mental
30 or emotional crisis" means a child, adolescent, or adult who
31 is experiencing a psychotic episode or a high level of mental

1 or emotional distress which may be precipitated by a traumatic
2 event or a perceived life problem for which the individual's
3 typical coping strategies are inadequate. The term includes an
4 individual who meets the criteria for involuntary examination
5 specified in s. 394.463(1).

6 (18)~~(19)~~ "Person who is experiencing an acute
7 substance abuse crisis" means a child, adolescent, or adult
8 who is experiencing a medical or emotional crisis because of
9 the use of alcoholic beverages or any psychoactive or
10 mood-altering substance. The term includes an individual who
11 meets the criteria for involuntary admission specified in s.
12 397.675.

13 (19)~~(20)~~ "Premises" means those buildings, beds, and
14 facilities located at the main address of the licensee and all
15 other buildings, beds, and facilities for the provision of
16 acute or residential care which are located in such reasonable
17 proximity to the main address of the licensee as to appear to
18 the public to be under the dominion and control of the
19 licensee.

20 (20)~~(21)~~ "Program office" means the Mental Health
21 Program Office of the Department of Children and Family
22 Services.

23 (21)~~(22)~~ "Residential treatment center for children
24 and adolescents" means a 24-hour residential program,
25 including a therapeutic group home, which provides mental
26 health services to emotionally disturbed children or
27 adolescents as defined in s. 394.492(5) or (6) and which is a
28 private for-profit or not-for-profit corporation under
29 contract with the department which offers a variety of
30 treatment modalities in a more restrictive setting.

31

1 ~~(22)~~~~(23)~~ "Residential treatment facility" means a
2 facility providing residential care and treatment to
3 individuals exhibiting symptoms of mental illness who are in
4 need of a 24-hour-per-day, 7-day-a-week structured living
5 environment, respite care, or long-term community placement.

6 (23) "Short-term residential treatment facility" means
7 a program that provides an alternative to inpatient
8 hospitalization and that provides brief, intensive services 24
9 hours a day, 7 days a week, for mentally ill individuals who
10 are temporarily in need of a 24-hour-a-day structured
11 therapeutic setting in a less restrictive, but longer-stay
12 alternative to hospitalization.

13 (24) "Sliding fee scale" means a schedule of fees for
14 identified services delivered by a service provider which are
15 based on a uniform schedule of discounts deducted from the
16 service provider's usual and customary charges. These charges
17 must be consistent with the prevailing market rates in the
18 community for comparable services.

19 (25) "Substance abuse services" means services
20 designed to prevent or remediate the consequences of substance
21 abuse, improve an individual's quality of life and
22 self-sufficiency, and support long-term recovery. The term
23 includes the following service categories:

24 (a) Prevention services, which include information
25 dissemination; education regarding the consequences of
26 substance abuse; alternative drug-free activities; problem
27 identification; referral of persons to appropriate prevention
28 programs; community-based programs that involve members of
29 local communities in prevention activities; and environmental
30 strategies to review, change, and enforce laws that control
31 the availability of controlled and illegal substances.

1 (b) Assessment services, which include the evaluation
2 of individuals and families in order to identify their
3 strengths and determine their required level of care,
4 motivation, and need for treatment and ancillary services.

5 (c) Intervention services, which include early
6 identification, short-term counseling and referral, and
7 outreach.

8 (d) Rehabilitation services, which include
9 residential, outpatient, day or night, case management,
10 in-home, psychiatric, and medical treatment, and methadone or
11 medication management.

12 (e) Ancillary services, which include self-help and
13 other support groups and activities; aftercare provided in a
14 structured, therapeutic environment; supported housing;
15 supported employment; vocational services; and educational
16 services.

17 Section 26. Section 394.875, Florida Statutes, is
18 amended to read:

19 394.875 Crisis stabilization units, short-term
20 residential treatment facilities, residential treatment
21 facilities, and residential treatment centers for children and
22 adolescents; authorized services; license required;
23 penalties.--

24 (1)(a) The purpose of a crisis stabilization unit is
25 to stabilize and redirect a client to the most appropriate and
26 least restrictive community setting available, consistent with
27 the client's needs. Crisis stabilization units may screen,
28 assess, and admit for stabilization persons who present
29 themselves to the unit and persons who are brought to the unit
30 under s. 394.463. Clients may be provided 24-hour
31 observation, medication prescribed by a physician or

1 psychiatrist, and other appropriate services. Crisis
2 stabilization units shall provide services regardless of the
3 client's ability to pay and shall be limited in size to a
4 maximum of 30 beds.

5 (b) The purpose of a short-term residential treatment
6 unit is to provide intensive services in a 24-hour-a-day
7 structured therapeutic setting as a less restrictive, but
8 longer-stay alternative to hospitalization.

9 (c)~~(b)~~ The purpose of a residential treatment facility
10 is to be a part of a comprehensive treatment program for
11 mentally ill individuals in a community-based residential
12 setting.

13 (d)~~(c)~~ The purpose of a residential treatment center
14 for children and adolescents is to provide mental health
15 assessment and treatment services pursuant to ss. 394.491,
16 394.495, and 394.496 to children and adolescents who meet the
17 target population criteria specified in s. 394.493(1)(a), (b),
18 or (c).

19 (2) The requirements of part II of chapter 408 apply
20 to the provision of services that necessitate licensure
21 pursuant to ss. 394.455-394.904 and part II of chapter 408 and
22 to entities licensed by or applying for such licensure from
23 the Agency for Health Care Administration pursuant to ss.
24 394.455-394.904. However, an applicant for licensure is exempt
25 from the provisions of s. 408.810(8), (9), and (10).~~It is~~
26 ~~unlawful for any entity to hold itself out as a crisis~~
27 ~~stabilization unit, a residential treatment facility, or a~~
28 ~~residential treatment center for children and adolescents, or~~
29 ~~to act as a crisis stabilization unit, a residential treatment~~
30 ~~facility, or a residential treatment center for children and~~
31

1 ~~adolescents, unless it is licensed by the agency pursuant to~~
2 ~~this chapter.~~

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

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

13 (3)(5) The following entities are exempt from
14 licensure as required in ss. 394.455-394.904 Subsection (2)
15 does not apply to:

16 (a) Hospitals licensed under chapter 395 or programs
17 operated within such hospitals.~~Homes for special services~~
18 ~~licensed under chapter 400; or~~

19 (b) Nursing homes licensed under chapter 400.

20 (c) Comprehensive transitional education programs
21 licensed under s. 393.067.

22 ~~(4)(6) The department, in consultation with the~~
23 ~~agency, may establish multiple license classifications for~~
24 ~~residential treatment facilities.~~

25 ~~(5)(7) The agency may not issue a license to a crisis~~
26 ~~stabilization unit unless the unit receives state mental~~
27 ~~health funds and is affiliated with a designated public~~
28 ~~receiving facility.~~

29 ~~(6)(8) The agency may issue a license for a crisis~~
30 ~~stabilization unit or short-term residential treatment~~
31 ~~facility, certifying the number of authorized beds for such~~

1 facility as indicated by existing need and available
2 appropriations. The agency may disapprove an application for
3 such a license if it determines that a facility should not be
4 licensed pursuant to the provisions of this chapter. Any
5 facility operating beds in excess of those authorized by the
6 agency shall, upon demand of the agency, reduce the number of
7 beds to the authorized number, forfeit its license, or provide
8 evidence of a license issued pursuant to chapter 395 for the
9 excess beds.

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

19 (8)~~(10)~~ The department, in consultation with the
20 agency, must adopt rules governing a residential treatment
21 center for children and adolescents which specify licensure
22 standards for: admission; length of stay; program and
23 staffing; discharge and discharge planning; treatment
24 planning; seclusion, restraints, and time-out; rights of
25 patients under s. 394.459; use of psychotropic medications;
26 and standards for the operation of such centers.

27 (9)~~(11)~~ Notwithstanding the provisions of subsection
28 (6)~~(8)~~, crisis stabilization units may not exceed their
29 licensed capacity by more than 10 percent, nor may they exceed
30 their licensed capacity for more than 3 consecutive working
31 days or for more than 7 days in 1 month.

1 (10)~~(12)~~ Notwithstanding the other provisions of this
2 section, any facility licensed under former chapter 396 and
3 chapter 397 for detoxification, residential level I care, and
4 outpatient treatment may elect to license concurrently all of
5 the beds at such facility both for that purpose and as a
6 long-term residential treatment facility pursuant to this
7 section, if all of the following conditions are met:

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

10 (b) On January 1, 1993, the facility was licensed
11 under former chapter 396 and chapter 397 as a facility for
12 detoxification, residential level I care, and outpatient
13 treatment of substance abuse.

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

17 (d) The number of beds to be licensed under this
18 chapter is equal to or less than the number of beds licensed
19 under former chapter 396 and chapter 397 as of January 1,
20 1993.

21 (e) The licensee agrees in writing to a condition
22 placed upon the license that the facility will limit its
23 treatment exclusively to law enforcement personnel and their
24 immediate families who are seeking admission on a voluntary
25 basis and who are exhibiting symptoms of posttraumatic stress
26 disorder or other mental health problems, including drug or
27 alcohol abuse, which are directly related to law enforcement
28 work and which are amenable to verbal treatment therapies; the
29 licensee agrees to coordinate the provision of appropriate
30 postresidential care for discharged individuals; and the
31 licensee further agrees in writing that a failure to meet any

1 condition specified in this paragraph shall constitute grounds
2 for a revocation of the facility's license as a residential
3 treatment facility.

4 (f) The licensee agrees that the facility will meet
5 all licensure requirements for a residential treatment
6 facility, including minimum standards for compliance with
7 lifesafety requirements, except those licensure requirements
8 which are in express conflict with the conditions and other
9 provisions specified in this subsection.

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

13

14 Any facility licensed under this subsection is not required to
15 provide any services to any persons except those included in
16 the specified conditions of licensure, and is exempt from any
17 requirements related to the 60-day or greater average length
18 of stay imposed on community-based residential treatment
19 facilities otherwise licensed under this chapter.

20 ~~(13) Each applicant for licensure must comply with the~~
21 ~~following requirements:~~

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

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

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

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

31

1 ~~disqualification exemption has not been requested of and~~
2 ~~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 ~~the requirements for disclosure of ownership and control~~
8 ~~interests under the Medicaid or Medicare programs shall be~~
9 ~~accepted in lieu of 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 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) A license may not be granted to an applicant if~~
29 ~~the applicant or managing employee has been found guilty of,~~
30 ~~regardless of adjudication, or has entered a plea of nolo~~
31 ~~contendere or guilty to, any offense prohibited under the~~

1 ~~level 2 standards for screening set forth in chapter 435,~~
2 ~~unless an exemption from disqualification has been granted by~~
3 ~~the agency as set forth in chapter 435.~~

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

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

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

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

15 Section 27. Section 394.876, Florida Statutes, is
16 repealed.

17 Section 28. Section 394.877, Florida Statutes, is
18 amended to read:

19 394.877 Fees.--

20 ~~(1) In accordance with s. 408.805, an applicant or~~
21 licensee shall pay a fee for each license application
22 submitted under this part and part II of chapter 408. The
23 amount of the fee shall be established by rule.~~Each~~
24 ~~application for licensure or renewal must be accompanied by a~~
25 ~~fee set by the department, in consultation with the agency, by~~
26 ~~rule.~~Such fees shall be reasonably calculated to cover only
27 the cost of regulation under this chapter.

28 ~~(2) All fees collected under this section shall be~~
29 ~~deposited in the Health Care Trust Fund.~~

30 Section 29. Section 394.878, Florida Statutes, is
31 amended to read:

1 394.878 Issuance and renewal of licenses.--
2 ~~(1) Upon review of the application for licensure and~~
3 ~~receipt of appropriate fees, the agency shall issue an~~
4 ~~original or renewal license to any applicant that meets the~~
5 ~~requirements of this chapter.~~
6 ~~(2) A license is valid for a period of 1 year. An~~
7 ~~applicant for renewal of a license shall apply to the agency~~
8 ~~no later than 90 days before expiration of the current~~
9 ~~license.~~
10 ~~(3) A license may not be transferred from one entity~~
11 ~~to another and is valid only for the premises for which it was~~
12 ~~originally issued. For the purposes of this subsection,~~
13 ~~"transfer" includes, but is not limited to, transfer of a~~
14 ~~majority of the ownership interests in a licensee or transfer~~
15 ~~of responsibilities under the license to another entity by~~
16 ~~contractual arrangement.~~
17 ~~(4) Each license shall state the services which the~~
18 ~~licensee is required or authorized to perform and the maximum~~
19 ~~residential capacity of the licensed premises.~~
20 (1)~~(5)~~ The agency may issue a probationary license to
21 an applicant that has completed the application requirements
22 of this chapter but has not, at the time of the application,
23 developed an operational crisis stabilization unit or
24 residential treatment facility. The probationary license
25 shall expire 90 days after issuance and may once be renewed
26 for an additional 90-day period. The agency may cancel a
27 probationary license at any time.
28 (2)~~(6)~~ The agency may issue an interim license to an
29 applicant that has substantially completed all application
30 requirements and has initiated action to fully meet such
31 requirements. The interim license shall expire 90 days after

1 issuance and, in cases of extreme hardship, may once be
2 renewed for an additional 90-day period.

3 ~~(7) Any applicant which fails to file an application~~
4 ~~for license renewal during the 90-day relicensure period shall~~
5 ~~be considered unlicensed and subject to penalties pursuant to~~
6 ~~s. 394.875.~~

7 Section 30. Subsections (1), (3), and (4) of section
8 394.879, Florida Statutes, are amended to read:

9 394.879 Rules; enforcement.--

10 (1) The agency, in consultation with the department,
11 may adopt rules to administer part II of chapter 408.The
12 department, in consultation with the agency, shall adopt rules
13 pursuant to ss. 120.536(1) and 120.54 to implement the
14 provisions of this chapter, including, at a minimum, rules
15 providing standards to ensure that:

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

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

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

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

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

29 (f) The operation and purposes of these facilities
30 assure individuals' health, safety, and welfare.

31

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

6 (4) In accordance with part II of chapter 408,the
7 agency may impose an administrative penalty of no more than
8 \$500 per day against any licensee that violates any rule
9 adopted pursuant to this section and may ~~suspend or~~ revoke the
10 license or deny the renewal application of such licensee. In
11 imposing such penalty, the agency shall consider the severity
12 of the violation, actions taken by the licensee to correct the
13 violation, and previous violations by the licensee. Fines
14 collected under this subsection shall be deposited in the
15 Mental Health Facility Licensing Trust Fund.

16 Section 31. Paragraph (a) of subsection (1) of section
17 394.90, Florida Statutes, is amended to read:

18 394.90 Inspection; right of entry; records.--

19 (1)(a) The department and the agency, in accordance
20 with s. 408.811, may enter and inspect at any time a licensed
21 facility to determine whether the facility is in compliance
22 with this chapter and applicable ~~the~~ rules of ~~the department~~.

23 Section 32. Section 394.902, Florida Statutes, is
24 amended to read:

25 394.902 Denial, ~~suspension,~~ and revocation; ~~other~~
26 ~~remedies~~.--

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

31

1 ~~(2) The agency may impose a moratorium on elective~~
2 ~~admissions to a licensee or any program or portion of a~~
3 ~~licensed facility if the agency determines that any condition~~
4 ~~in the facility presents a threat to the public health or~~
5 ~~safety.~~

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

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

18 ~~(5) License denial, suspension, or revocation~~
19 ~~procedures shall be in accordance with chapter 120.~~

20 Section 33. Subsection (4) of section 395.002, Florida
21 Statutes, is repealed.

22 Section 34. Section 395.003, Florida Statutes, is
23 amended to read:

24 395.003 Licensure; ~~issuance, renewal, denial,~~
25 ~~modification, suspension,~~and revocation.--

26 (1)~~(a)~~ The requirements of part II of chapter 408
27 apply to the provision of services that necessitate licensure
28 pursuant to ss. 395.001-395.1065 and part II of chapter 408
29 and to entities licensed by or applying for such licensure
30 from the Agency for Health Care Administration pursuant to ss.
31

1 395.001-395.1065. However, an applicant for licensure is
2 exempt from certain requirements of s. 408.810, as follows:

3 (a) An applicant for an ambulatory surgery center or a
4 mobile surgical facility license is exempt from s.
5 408.810(7)-(10); and

6 (b) An applicant for a hospital license is exempt from
7 s. 408.810(7)-(9). No person shall establish, conduct, or
8 maintain a hospital, ambulatory surgical center, or mobile
9 surgical facility in this state without first obtaining a
10 license under this part.

11 (2)(a)(b)1. A ~~It is unlawful for any person~~ may not to
12 use or advertise to the public, in any way or by any medium
13 whatsoever, any facility as a "hospital," "ambulatory surgical
14 center," or "mobile surgical facility" unless such facility
15 has first secured a license under the provisions of this part.

16 (b)2. Nothing in This part does not apply ~~applies~~ to
17 veterinary hospitals or to commercial business establishments
18 using the word "hospital," "ambulatory surgical center," or
19 "mobile surgical facility" as a part of a trade name if no
20 treatment of human beings is not performed on the premises of
21 such establishments.

22 ~~(2)(a) Upon the receipt of an application for a~~
23 ~~license and the license fee, the agency shall issue a license~~
24 ~~if the applicant and facility have received all approvals~~
25 ~~required by law and meet the requirements established under~~
26 ~~this part and in rules. Such license shall include all beds~~
27 ~~and services located on the premises of the facility.~~

28 ~~(b) A provisional license may be issued to a new~~
29 ~~facility or a facility that is in substantial compliance with~~
30 ~~this part and with the rules of the agency. A provisional~~
31 ~~license shall be granted for a period of no more than 1 year~~

1 ~~and shall expire automatically at the end of its term. A~~
2 ~~provisional license may not be renewed.~~

3 ~~(c) A license, unless sooner suspended or revoked,~~
4 ~~shall automatically expire 2 years from the date of issuance~~
5 ~~and shall be renewable biennially upon application for renewal~~
6 ~~and payment of the fee prescribed by s. 395.004(2), provided~~
7 ~~the applicant and licensed facility meet the requirements~~
8 ~~established under this part and in rules. An application for~~
9 ~~renewal of a license shall be made 90 days prior to expiration~~
10 ~~of the license, on forms provided by the agency.~~

11 (3)~~(d)~~ The agency shall, at the request of a licensee,
12 issue a single license to a licensee for facilities located on
13 separate premises. Such a license shall specifically state
14 the location of the facilities, the services, and the licensed
15 beds available on each separate premises. If a licensee
16 requests a single license, the licensee shall designate which
17 facility or office is responsible for receipt of information,
18 payment of fees, service of process, and all other activities
19 necessary for the agency to carry out the provisions of this
20 part.

21 (4)~~(e)~~ The agency shall, at the request of a licensee
22 that is a teaching hospital as defined in s. 408.07(44), issue
23 a single license to a licensee for facilities that have been
24 previously licensed as separate premises, provided such
25 separately licensed facilities, taken together, constitute the
26 same premises as defined in s. 395.002(24). Such license for
27 the single premises shall include all of the beds, services,
28 and programs that were previously included on the licenses for
29 the separate premises. The granting of a single license under
30 this paragraph shall not in any manner reduce the number of
31 beds, services, or programs operated by the licensee.

1 ~~(5)(f)~~ Intensive residential treatment programs for
2 children and adolescents which have received accreditation
3 from the Joint Commission on Accreditation of Healthcare
4 Organizations and which meet the minimum standards developed
5 by rule of the agency for such programs shall be licensed by
6 the agency under this part.

7 ~~(3)(a)~~ Each license shall be valid only for the person
8 to whom it is issued and shall not be sold, assigned, or
9 otherwise transferred, voluntarily or involuntarily. A
10 license is only valid for the premises for which it was
11 originally issued.

12 ~~(b)1.~~ An application for a new license is required if
13 ownership, a majority of the ownership, or controlling
14 interest of a licensed facility is transferred or assigned and
15 when a lessee agrees to undertake or provide services to the
16 extent that legal liability for operation of the facility
17 rests with the lessee. The application for a new license
18 showing such change shall be made at least 60 days prior to
19 the date of the sale, transfer, assignment, or lease.

20 ~~(6)2.~~ After a change of ownership has occurred, the
21 transferee shall be liable for any liability to the state,
22 regardless of when identified, resulting from changes to
23 allowable costs affecting provider reimbursement for Medicaid
24 participation or Public Medical Assistance Trust Fund
25 Assessments, and related administrative fines. ~~The~~
26 ~~transferee, simultaneously with the transfer of ownership,~~
27 ~~shall pay or make arrangements to pay to the agency or the~~
28 ~~department any amount owed to the agency or the department;~~
29 ~~payment assurances may be in the form of an irrevocable credit~~
30 ~~instrument or payment bond acceptable to the agency or the~~
31 ~~department provided by or on behalf of the transferor. The~~

1 ~~issuance of a license to the transferee shall be delayed~~
2 ~~pending payment or until arrangement for payment acceptable to~~
3 ~~the agency or the department is made.~~

4 (7)~~(4)~~ The agency shall issue a license which
5 specifies the service categories and the number of hospital
6 beds in each bed category for which a license is received.
7 Such information shall be listed on the face of the license.
8 All beds which are not covered by any specialty-bed-need
9 methodology shall be specified as general beds. A licensed
10 facility shall not operate a number of hospital beds greater
11 than the number indicated by the agency on the face of the
12 license without approval from the agency under conditions
13 established by rule.

14 (8)~~(5)~~(a) Adherence to patient rights, standards of
15 care, and examination and placement procedures provided under
16 part I of chapter 394 shall be a condition of licensure for
17 hospitals providing voluntary or involuntary medical or
18 psychiatric observation, evaluation, diagnosis, or treatment.

19 (b) Any hospital that provides psychiatric treatment
20 to persons under 18 years of age who have emotional
21 disturbances shall comply with the procedures pertaining to
22 the rights of patients prescribed in part I of chapter 394.

23 (9)~~(6)~~ A ~~No~~ specialty hospital may not ~~shall~~ provide
24 any service or regularly serve any population group beyond
25 those services or groups specified in its license.

26 ~~(7) Licenses shall be posted in a conspicuous place on~~
27 ~~each of the licensed premises.~~

28 (10)~~(8)~~ In addition to the requirements of ss.
29 408.801-408.819, whenever the agency finds that there has been
30 a substantial failure to comply with the requirements

31

1 established under this part or in rules, the agency is
2 authorized to deny, modify, suspend, or revoke:

3 (a) A license;

4 (b) That part of a license which is limited to a
5 separate premises, as designated on the license; or

6 (c) Licensure approval limited to a facility,
7 building, or portion thereof, or a service, within a given
8 premises.

9 Section 35. Section 395.004, Florida Statutes, is
10 amended to read:

11 395.004 ~~Application for license, Fees; expenses.--~~

12 (1) In accordance with s. 408.805, an applicant or
13 licensee shall pay a fee for each license application
14 submitted under this part and ss. 408.801-408.819. The amount
15 of the fee shall be established by rule ~~An application for a~~
16 ~~license or renewal thereof shall be made under oath to the~~
17 ~~agency, upon forms provided by it, and shall contain such~~
18 ~~information as the agency reasonably requires, which may~~
19 ~~include affirmative evidence of ability to comply with~~
20 ~~applicable laws and rules.~~

21 ~~(2) Each application for a general hospital license,~~
22 ~~specialty hospital license, ambulatory surgical center~~
23 ~~license, or mobile surgical facility license, or renewal~~
24 ~~thereof, shall be accompanied by a license fee, in accordance~~
25 ~~with the following schedule:~~

26 ~~(a) The biennial license, provisional license, and~~
27 ~~license renewal fee required of a facility licensed under this~~
28 ~~part shall be reasonably calculated to cover the cost of~~
29 ~~regulation under this part and shall be established by rule at~~
30 ~~the rate of not less than \$9.50 per hospital bed, nor more~~
31 ~~than \$30 per hospital bed, except that the minimum license fee~~

1 shall be \$1,500 ~~and the total fees collected from all licensed~~
2 ~~facilities may not exceed the cost of properly carrying out~~
3 ~~the provisions of this part.~~

4 ~~(b) Such fees shall be paid to the agency and shall be~~
5 ~~deposited in the Planning and Regulation Trust Fund of the~~
6 ~~agency, which is hereby created, for the sole purpose of~~
7 ~~carrying out the provisions of this part.~~

8 Section 36. Section 395.0055, Florida Statutes, is
9 repealed.

10 Section 37. Section 395.0161, Florida Statutes, is
11 amended to read:

12 395.0161 Licensure inspection.--

13 (1) In accordance with s. 408.811,the agency shall
14 ~~make or cause to be made such inspections and investigations~~
15 ~~as it deems necessary, including:~~

16 ~~(a) Inspections directed by the Health Care Financing~~
17 ~~Administration.~~

18 ~~(b) Validation inspections.~~

19 ~~(c) Lifesafety inspections.~~

20 ~~(d) Licensure complaint investigations, including full~~
21 ~~licensure investigations with a review of all licensure~~
22 ~~standards as outlined in the administrative rules. Complaints~~
23 ~~received by the agency from individuals, organizations, or~~
24 ~~other sources are subject to review and investigation by the~~
25 ~~agency.~~

26 ~~(e) Emergency access complaint investigations.~~

27 ~~(f)~~ inspections of mobile surgical facilities at each
28 time a facility establishes a new location, prior to the
29 admission of patients. However, such inspections shall not be
30 required when a mobile surgical facility is moved temporarily
31 to a location where medical treatment will not be provided.

1 (2) The agency shall accept, in lieu of its own
2 periodic inspections for licensure, the survey or inspection
3 of an accrediting organization, provided the accreditation of
4 the licensed facility is not provisional and provided the
5 licensed facility authorizes release of, and the agency
6 receives the report of, the accrediting organization. The
7 agency shall develop, and adopt by rule, criteria for
8 accepting survey reports of accrediting organizations in lieu
9 of conducting a state licensure inspection.

10 (3) In accordance with s. 408.805, an applicant or
11 licensee shall pay a fee for each license application
12 submitted under this part and part II of chapter 408.With the
13 exception of state-operated licensed facilities, each facility
14 licensed under this part shall pay to the agency, at the time
15 of inspection, the following fees:

16 (a) Inspection for licensure.--A fee shall be paid
17 which is not less than \$8 per hospital bed, nor more than \$12
18 per hospital bed, except that the minimum fee shall be \$400
19 per facility.

20 (b) Inspection for lifesafety only.--A fee shall be
21 paid which is not less than 75 cents per hospital bed, nor
22 more than \$1.50 per hospital bed, except that the minimum fee
23 shall be \$40 per facility.

24 (4) The agency shall coordinate all periodic
25 inspections for licensure made by the agency to ensure that
26 the cost to the facility of such inspections and the
27 disruption of services by such inspections is minimized.

28 Section 38. Section 395.0162, Florida Statutes, is
29 repealed.

30 Section 39. Subsections (2) and (3) of section
31 395.0163, Florida Statutes, are amended to read:

1 395.0163 Construction inspections; plan submission and
2 approval; fees.--

3 (2)(a) The agency is authorized to charge an initial
4 fee of \$2,000 for review of plans and construction on all
5 projects, no part of which is refundable. The agency may also
6 collect a fee, not to exceed 1 percent of the estimated
7 construction cost or the actual cost of review, whichever is
8 less, for the portion of the review which encompasses initial
9 review through the initial revised construction document
10 review. The agency is further authorized to collect its
11 actual costs on all subsequent portions of the review and
12 construction inspections. The initial fee payment shall
13 accompany the initial submission of plans and specifications.
14 Any subsequent payment that is due is payable upon receipt of
15 the invoice from the agency.

16 ~~(b) Notwithstanding any other provisions of law to the~~
17 ~~contrary, all moneys received by the agency pursuant to the~~
18 ~~provisions of this section shall be deposited in the Planning~~
19 ~~and Regulation Trust Fund, as created by s. 395.004, to be~~
20 ~~held and applied solely for the operations required under this~~
21 ~~section.~~

22 (3) In accordance with s. 408.811, the agency shall
23 inspect a mobile surgical facility at initial licensure and at
24 each time the facility establishes a new location, prior to
25 admission of patients. However, such inspections shall not be
26 required when a mobile surgical facility is moved temporarily
27 to a location where medical treatment will not be provided.

28 Section 40. Subsection (2) of section 395.0197,
29 Florida Statutes, is amended to read:

30 395.0197 Internal risk management program.--

31

1 (2) The internal risk management program is the
2 responsibility of the governing board of the health care
3 facility. Each licensed facility shall use the services of
4 ~~hire~~ a risk manager, licensed under s. 395.10974, who is
5 responsible for implementation and oversight of such
6 facility's internal risk management program as required by
7 this section. A risk manager must not be made responsible for
8 more than four internal risk management programs in separate
9 hospitals ~~licensed facilities~~, unless the hospitals ~~facilities~~
10 are under one corporate ownership or the risk management
11 programs are in rural hospitals.

12 Section 41. Section 395.0199, Florida Statutes, is
13 amended to read:

14 395.0199 Private utilization review.--

15 (1) The purpose of this section is to:

16 (a) Promote the delivery of quality health care in a
17 cost-effective manner.

18 (b) Foster greater coordination between providers and
19 health insurers performing utilization review.

20 (c) Protect patients and insurance providers by
21 ensuring that private review agents are qualified to perform
22 utilization review activities and to make informed decisions
23 on the appropriateness of medical care.

24 (d) This section does not regulate the activities of
25 private review agents, health insurers, health maintenance
26 organizations, or hospitals, except as expressly provided
27 herein, or authorize regulation or intervention as to the
28 correctness of utilization review decisions of insurers or
29 private review agents.

30 (2) The requirements of part II of chapter 408 apply
31 to the provision of services that necessitate registration or

1 licensure pursuant to this section and part II of chapter 408
2 and to persons registered by or applying for such registration
3 from the Agency for Health Care Administration pursuant to
4 this section. However, an applicant for registration is exempt
5 from the provisions of ss. 408.810(5), (6), (7), (8), (9), and
6 (10) and 408.811.~~A private review agent conducting~~
7 ~~utilization review as to health care services performed or~~
8 ~~proposed to be performed in this state shall register with the~~
9 ~~agency in accordance with this section.~~

10 (3) In accordance with s. 408.805, an applicant or
11 registrant shall pay a fee for each registration issued under
12 this part and part II of chapter 408. The amount of the fee
13 shall be established by rule.~~Registration shall be made~~
14 ~~annually with the agency on forms furnished by the agency and~~
15 ~~shall be accompanied by the appropriate registration fee as~~
16 ~~set by the agency. The fee shall be sufficient to pay for the~~
17 ~~administrative costs of registering the agent, but may shall~~
18 ~~not exceed \$250. The agency may also charge reasonable fees,~~
19 ~~reflecting actual costs, to persons requesting copies of~~
20 ~~registration.~~

21 (4) ~~Each applicant for registration must comply with~~
22 ~~the following requirements:~~

23 (a) ~~Upon receipt of a completed, signed, and dated~~
24 ~~application, the agency shall require background screening, in~~
25 ~~accordance with the level 2 standards for screening set forth~~
26 ~~in chapter 435, of the managing employee or other similarly~~
27 ~~titled individual who is responsible for the operation of the~~
28 ~~entity. The applicant must comply with the procedures for~~
29 ~~level 2 background screening as set forth in chapter 435, as~~
30 ~~well as the requirements of s. 435.03(3).~~

31

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

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

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

31

1 ~~disqualification exemption has not been requested of and~~
2 ~~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 ~~the requirements for disclosure of ownership and control~~
8 ~~interests under the Medicaid or Medicare programs shall be~~
9 ~~accepted in lieu of 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 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) A registration may not be granted to an applicant~~
29 ~~if the applicant or managing employee has been found guilty~~
30 ~~of, regardless of adjudication, or has entered a plea of nolo~~
31 ~~contendere or guilty to, any offense prohibited under the~~

1 ~~level 2 standards for screening set forth in chapter 435,~~
2 ~~unless an exemption from disqualification has been granted by~~
3 ~~the agency as set forth in chapter 435.~~

4 ~~(h) The agency may deny or revoke the registration if~~
5 ~~any applicant:~~

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

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

13 ~~(i) An application for registration renewal must~~
14 ~~contain the information required under paragraphs (e) and (f).~~

15 (4)(5) Registration shall include the following:

16 (a) A description of the review policies and
17 procedures to be used in evaluating proposed or delivered
18 hospital care.

19 (b) The name, address, and telephone number of the
20 utilization review agent performing utilization review, who
21 shall be at least:

22 1. A licensed practical nurse or licensed registered
23 nurse, or other similarly qualified medical records or health
24 care professionals, for performing initial review when
25 information is necessary from the physician or hospital to
26 determine the medical necessity or appropriateness of hospital
27 services; or

28 2. A licensed physician, or a licensed physician
29 practicing in the field of psychiatry for review of mental
30 health services, for an initial denial determination prior to
31 a final denial determination by the health insurer and which

1 shall include the written evaluation and findings of the
2 reviewing physician.

3 (c) A description of an appeal procedure for patients
4 or health care providers whose services are under review, who
5 may appeal an initial denial determination prior to a final
6 determination by the health insurer with whom the private
7 review agent has contracted. The appeal procedure shall
8 provide for review by a licensed physician, or by a licensed
9 physician practicing in the field of psychiatry for review of
10 mental health services, and shall include the written
11 evaluation and findings of the reviewing physician.

12 (d) A designation of the times when the staff of the
13 utilization review agent will be available by toll-free
14 telephone, which shall include at least 40 hours per week
15 during the normal business hours of the agent.

16 (e) An acknowledgment and agreement that any private
17 review agent which, as a general business practice, fails to
18 adhere to the policies, procedures, and representations made
19 in its application for registration shall have its
20 registration revoked.

21 (f) Disclosure of any incentive payment provision or
22 quota provision which is contained in the agent's contract
23 with a health insurer and is based on reduction or denial of
24 services, reduction of length of stay, or selection of
25 treatment setting.

26 (g) Updates of any material changes to review policies
27 or procedures.

28 ~~(6) The agency may impose fines or suspend or revoke~~
29 ~~the registration of any private review agent in violation of~~
30 ~~this section. Any private review agent failing to register or~~
31 ~~update registration as required by this section shall be~~

1 ~~deemed to be within the jurisdiction of the agency and subject~~
2 ~~to an administrative penalty not to exceed \$1,000. The agency~~
3 ~~may bring actions to enjoin activities of private review~~
4 ~~agents in violation of this section.~~

5 ~~(5)(7)~~ An ~~No~~ insurer may not ~~shall~~ knowingly contract
6 with or utilize a private review agent that ~~which~~ has failed
7 to register as required by this section or ~~which~~ has had a
8 registration revoked by the agency.

9 ~~(6)(8)~~ A private review agent that ~~which~~ operates
10 under contract with the federal or state government for
11 utilization review of patients eligible for hospital or other
12 services under Title XVIII or Title XIX of the Social Security
13 Act is exempt from the provisions of this section for services
14 provided under such contract. A private review agent that
15 ~~which~~ provides utilization review services to the federal or
16 state government and a private insurer shall not be exempt for
17 services provided to nonfederally funded patients. This
18 section shall not apply to persons who perform utilization
19 review services for medically necessary hospital services
20 provided to injured workers pursuant to chapter 440 and shall
21 not apply to self-insurance funds or service companies
22 authorized pursuant to chapter 440 or part VII of chapter 626.

23 ~~(7)(9)~~ Facilities licensed under this chapter shall
24 promptly comply with the requests of utilization review agents
25 or insurers which are reasonably necessary to facilitate
26 prompt accomplishment of utilization review activities.

27 ~~(8)(10)~~ The agency shall adopt rules to implement the
28 provisions of this section.

29 Section 42. Subsection (1) of section 395.1046,
30 Florida Statutes, is amended to read:

31 395.1046 Complaint investigation procedures.--

1 (1) In accordance with s. 408.811, the agency shall
2 investigate any complaint against a hospital for any violation
3 of s. 395.1041 that the agency reasonably believes to be
4 legally sufficient. A complaint is legally sufficient if it
5 contains ultimate facts which show that a violation of this
6 chapter, or any rule adopted under this chapter by the agency,
7 has occurred. The agency may investigate, or continue to
8 investigate, and may take appropriate final action on a
9 complaint, even though the original complainant withdraws his
10 or her complaint or otherwise indicates his or her desire not
11 to cause it to be investigated to completion. When an
12 investigation of any person or facility is undertaken, the
13 agency shall notify such person in writing of the
14 investigation and inform the person or facility in writing of
15 the substance, the facts which show that a violation has
16 occurred, and the source of any complaint filed against him or
17 her. The agency may conduct an investigation without
18 notification to any person if the act under investigation is a
19 criminal offense. ~~The agency shall have access to all records
20 necessary for the investigation of the complaint.~~

21 Section 43. Subsections (1), (7), and (8) of section
22 395.1055, Florida Statutes, are amended to read:

23 395.1055 Rules and enforcement.--

24 (1) The agency shall adopt rules pursuant to ss.
25 120.536(1) and 120.54 to implement the provisions of this part
26 and part II of chapter 408, which shall include reasonable and
27 fair minimum standards for ensuring that:

28 (a) Sufficient numbers and qualified types of
29 personnel and occupational disciplines are on duty and
30 available at all times to provide necessary and adequate
31 patient care and safety.

1 (b) Infection control, housekeeping, sanitary
2 conditions, and medical record procedures that will adequately
3 protect patient care and safety are established and
4 implemented.

5 (c) A comprehensive emergency management plan is
6 prepared and updated annually. Such standards must be
7 included in the rules adopted by the agency after consulting
8 with the Department of Community Affairs. At a minimum, the
9 rules must provide for plan components that address emergency
10 evacuation transportation; adequate sheltering arrangements;
11 postdisaster activities, including emergency power, food, and
12 water; postdisaster transportation; supplies; staffing;
13 emergency equipment; individual identification of residents
14 and transfer of records, and responding to family inquiries.
15 The comprehensive emergency management plan is subject to
16 review and approval by the local emergency management agency.
17 During its review, the local emergency management agency shall
18 ensure that the following agencies, at a minimum, are given
19 the opportunity to review the plan: the Department of Elderly
20 Affairs, the Department of Health, the Agency for Health Care
21 Administration, and the Department of Community Affairs. Also,
22 appropriate volunteer organizations must be given the
23 opportunity to review the plan. The local emergency
24 management agency shall complete its review within 60 days and
25 either approve the plan or advise the facility of necessary
26 revisions.

27 (d) Licensed facilities are established, organized,
28 and operated consistent with established standards and rules.

29 (e) Licensed facility beds conform to minimum space,
30 equipment, and furnishings standards as specified by the
31 department.

1 (f) All hospitals submit such data as necessary to
2 conduct certificate-of-need reviews required under ss.
3 408.031-408.045. Such data shall include, but shall not be
4 limited to, patient origin data, hospital utilization data,
5 type of service reporting, and facility staffing data. The
6 agency shall not collect data that identifies or could
7 disclose the identity of individual patients. The agency shall
8 utilize existing uniform statewide data sources when available
9 and shall minimize reporting costs to hospitals.

10 (g) Each hospital has a quality improvement program
11 designed according to standards established by their current
12 accrediting organization. This program will enhance quality of
13 care and emphasize quality patient outcomes, corrective action
14 for problems, governing board review, and reporting to the
15 agency of standardized data elements necessary to analyze
16 quality of care outcomes. The agency shall use existing data,
17 when available, and shall not duplicate the efforts of other
18 state agencies in order to obtain such data.

19 ~~(7) Any licensed facility which is in operation at the~~
20 ~~time of promulgation of any applicable rules under this part~~
21 ~~shall be given a reasonable time, under the particular~~
22 ~~circumstances, but not to exceed 1 year from the date of such~~
23 ~~promulgation, within which to comply with such rules.~~

24 (7)(8) The agency may not adopt any rule governing the
25 design, construction, erection, alteration, modification,
26 repair, or demolition of any public or private hospital,
27 intermediate residential treatment facility, or ambulatory
28 surgical center. It is the intent of the Legislature to
29 preempt that function to the Florida Building Commission and
30 the State Fire Marshal through adoption and maintenance of the
31 Florida Building Code and the Florida Fire Prevention Code.

1 However, the agency shall provide technical assistance to the
2 commission and the State Fire Marshal in updating the
3 construction standards of the Florida Building Code and the
4 Florida Fire Prevention Code which govern hospitals,
5 intermediate residential treatment facilities, and ambulatory
6 surgical centers.

7 Section 44. Section 395.1065, Florida Statutes, is
8 amended to read:

9 395.1065 Criminal and administrative penalties;
10 injunctions; ~~emergency orders~~; moratorium.--

11 ~~(1) Any person establishing, conducting, managing, or~~
12 ~~operating any facility without a license under this part is~~
13 ~~guilty of a misdemeanor and, upon conviction, shall be fined~~
14 ~~not more than \$500 for the first offense and not more than~~
15 ~~\$1,000 for each subsequent offense, and each day of continuing~~
16 ~~violation after conviction shall be considered a separate~~
17 ~~offense.~~

18 (1)(2)(a) The agency may ~~deny, revoke, or suspend a~~
19 ~~license or~~ impose an administrative fine, not to exceed \$1,000
20 per violation, per day, for the violation of any provision of
21 this part, part II of chapter 408, or applicable rules adopted
22 ~~under this part. Each day of violation constitutes a separate~~
23 ~~violation and is subject to a separate fine.~~

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

27 1. The severity of the violation, including the
28 probability that death or serious harm to the health or safety
29 of any person will result or has resulted, the severity of the
30 actual or potential harm, and the extent to which the
31 provisions of this part were violated.

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

3 3. Any previous violations of the licensee.

4 ~~(c) All amounts collected pursuant to this section~~
5 ~~shall be deposited into the Planning and Regulation Trust~~
6 ~~Fund, as created by s. 395.004.~~

7 (c)~~(d)~~ The agency may impose an administrative fine
8 for the violation of s. 641.3154 or, if sufficient claims due
9 to a provider from a health maintenance organization do not
10 exist to enable the take-back of an overpayment, as provided
11 under s. 641.3155(5), for the violation of s. 641.3155(5). The
12 administrative fine for a violation cited in this paragraph
13 shall be in the amounts specified in s. 641.52(5), and the
14 provisions of paragraph (a) do not apply.

15 (2)~~(3)~~ Notwithstanding the existence or pursuit of any
16 other remedy, the agency may maintain an action in the name of
17 the state for injunction or other process to enforce the
18 provisions of this part, part II of chapter 408, and
19 applicable rules promulgated hereunder.

20 ~~(4) The agency may issue an emergency order~~
21 ~~immediately suspending or revoking a license when it~~
22 ~~determines that any condition in the licensed facility~~
23 ~~presents a clear and present danger to public health and~~
24 ~~safety.~~

25 ~~(5) The agency may impose an immediate moratorium on~~
26 ~~elective admissions to any licensed facility, building, or~~
27 ~~portion thereof, or service, when the agency determines that~~
28 ~~any condition in the facility presents a threat to public~~
29 ~~health or safety.~~

30 (3)~~(6)~~ In seeking to impose penalties against a
31 facility as defined in s. 394.455 for a violation of part I of

1 chapter 394, the agency is authorized to rely on the
2 investigation and findings by the Department of Health in lieu
3 of conducting its own investigation.

4 Section 45. Subsection (1) of section 395.10973,
5 Florida Statutes, is amended to read:

6 395.10973 Powers and duties of the agency.--It is the
7 function of the agency to:

8 (1) Adopt rules pursuant to ss. 120.536(1) and 120.54
9 to implement the provisions of this part and part II of
10 chapter 408 conferring duties upon it.

11 Section 46. Section 395.10974, Florida Statutes, is
12 amended to read:

13 395.10974 Health care risk managers; qualifications,
14 licensure, fees.--

15 (1) The requirements of part II of chapter 408 apply
16 to the provision of services that necessitate licensure
17 pursuant to ss. 395.10971-395.10976 and part II of chapter 408
18 and to entities licensed by or applying for such licensure
19 from the Agency for Health Care Administration pursuant to ss.
20 395.10971-395.10976.~~Any person desiring to be licensed as a~~
21 ~~health care risk manager shall submit an application on a form~~
22 ~~provided by the agency.~~In order to qualify for licensure, the
23 applicant shall submit evidence satisfactory to the agency
24 which demonstrates the applicant's competence, by education or
25 experience, in the following areas:

26 (a) Applicable standards of health care risk
27 management.

28 (b) Applicable federal, state, and local health and
29 safety laws and rules.

30 (c) General risk management administration.

31 (d) Patient care.

- 1 (e) Medical care.
- 2 (f) Personal and social care.
- 3 (g) Accident prevention.
- 4 (h) Departmental organization and management.
- 5 (i) Community interrelationships.
- 6 (j) Medical terminology.
- 7

8 Each applicant for licensure must comply with all provisions
9 of part II of chapter 408, with the exception of ss. 408.809,
10 408.810, and 408.811.The agency may require such additional
11 information, from the applicant or any other person, as may be
12 reasonably required to verify the information contained in the
13 application.

14 (2) The agency shall not grant or issue a license as a
15 health care risk manager to any individual unless from the
16 application it affirmatively appears that the applicant:

- 17 (a) Is 18 years of age or over;
- 18 (b) Is a high school graduate or equivalent; and
- 19 (c)1. Has fulfilled the requirements of a 1-year
20 program or its equivalent in health care risk management
21 training which may be developed or approved by the agency;
- 22 2. Has completed 2 years of college-level studies
23 which would prepare the applicant for health care risk
24 management, to be further defined by rule; or
- 25 3. Has obtained 1 year of practical experience in
26 health care risk management.

27 (3) The agency shall issue a license to practice
28 health care risk management to any applicant who qualifies
29 under this section. In accordance with s. 408.805, an
30 applicant or licensee shall pay a fee for each license
31 application submitted under this part and part II of chapter

1 408. The amount of the fees shall be established by rule, as
2 follows:~~and submits an application fee of not more than \$75,~~
3 ~~a fingerprinting fee of not more than \$75, and a license fee~~
4 ~~of not more than \$100. The agency shall by rule establish fees~~
5 ~~and procedures for the issuance and cancellation of licenses.~~

6 ~~(4) The agency shall renew a health care risk manager~~
7 ~~license upon receipt of a biennial renewal application and~~
8 ~~fees. The agency shall by rule establish a procedure for the~~
9 ~~biennial renewal of licenses.~~

10 Section 47. Subsection (2) of section 395.10975,
11 Florida Statutes, is amended to read:

12 395.10975 Grounds for denial,~~suspension,~~or
13 revocation of a health care risk manager's license;
14 administrative fine.--

15 (2) If the agency finds that one or more of the
16 grounds set forth in subsection (1) exist, it may, in lieu of
17 or in addition to denial ~~suspension~~ or revocation, enter an
18 order imposing one or more of the following penalties:

19 (a) Imposition of an administrative fine not to exceed
20 \$2,500 for each count or separate offense.

21 (b) Issuance of a reprimand.

22 (c) Placement of the licensee on probation for a
23 period of time and subject to such conditions as the agency
24 may specify, including requiring the licensee to attend
25 continuing education courses or to work under the supervision
26 of another licensee.

27 Section 48. Subsections (5) and (20) of section
28 400.021, Florida Statutes, are repealed.

29 Section 49. Subsection (3) of section 400.022, Florida
30 Statutes, is amended to read:

31 400.022 Residents' rights.--

1 (3) Any violation of the resident's rights set forth
2 in this section shall constitute grounds for action by the
3 agency under the provisions of s. 400.102, s. 400.121, or part
4 II of chapter 408. In order to determine whether the licensee
5 is adequately protecting residents' rights, the licensure
6 ~~annual~~ inspection of the facility shall include private
7 informal conversations with a sample of residents to discuss
8 residents' experiences within the facility with respect to
9 rights specified in this section and general compliance with
10 standards, and consultation with the ombudsman council in the
11 local planning and service area of the Department of Elderly
12 Affairs in which the nursing home is located.

13 Section 50. Paragraph (b) of subsection (1) of section
14 400.051, Florida Statutes, is amended to read:

15 400.051 Homes or institutions exempt from the
16 provisions of this part.--

17 (1) The following shall be exempt from the provisions
18 of this part:

19 (b) Any hospital, as defined in s. 395.002 ~~s.~~
20 ~~395.002(11)~~, that is licensed under chapter 395.

21 Section 51. Section 400.062, Florida Statutes, is
22 amended to read:

23 400.062 License required; fee; disposition; display;
24 transfer.--

25 (1) The requirements of part II of chapter 408 apply
26 to the provision of services that necessitate licensure
27 pursuant to this part and part II of chapter 408 and to
28 entities licensed by or applying for such licensure from the
29 Agency for Health Care Administration pursuant to this part.
30 ~~It is unlawful to operate or maintain a facility without first~~
31

1 ~~obtaining from the agency a license authorizing such~~
2 ~~operation.~~

3 (2) Separate licenses shall be required for facilities
4 maintained in separate premises, even though operated under
5 the same management. However, a separate license shall not be
6 required for separate buildings on the same grounds.

7 (3) In accordance with s. 408.805, an applicant or
8 licensee shall pay a fee for each license application
9 submitted under this part and part II of chapter 408.~~The~~
10 ~~annual~~ license fee ~~required for each license issued under this~~
11 ~~part~~ shall be comprised of two parts. Part I of the license
12 fee shall be the basic license fee. The rate per bed for the
13 basic license fee shall be established biennially ~~annually~~ and
14 shall be ~~\$100~~\$50 per bed unless modified by rule. ~~The agency~~
15 ~~may adjust the per bed licensure fees by the Consumer Price~~
16 ~~Index based on the 12 months immediately preceding the~~
17 ~~increase to cover the cost of regulation under this part.~~ Part
18 II of the license fee shall be the resident protection fee,
19 which shall be at the rate of not less than 50 ~~25~~ cents per
20 bed. The rate per bed shall be the minimum rate per bed, and
21 such rate shall remain in effect until the effective date of a
22 rate per bed adopted by rule by the agency pursuant to this
23 part. At such time as the amount on deposit in the Resident
24 Protection Trust Fund is less than \$1 million, the agency may
25 adopt rules to establish a rate which may not exceed \$20 ~~\$10~~
26 per bed. The rate per bed shall revert back to the minimum
27 rate per bed when the amount on deposit in the Resident
28 Protection Trust Fund reaches \$1 million, except that any rate
29 established by rule shall remain in effect until such time as
30 the rate has been equally required for each license issued
31 under this part. Any amount in the fund in excess of \$2

1 million shall revert to the Health Care Trust Fund and may not
2 be expended without prior approval of the Legislature. The
3 agency may prorate the biennial ~~annual~~ license fee for those
4 licenses which it issues under this part for less than 2 years
5 ~~1 year~~. ~~Funds generated by license fees collected in~~
6 ~~accordance with this section shall be deposited in the~~
7 ~~following manner:~~

8 ~~(a) The basic license fee collected shall be deposited~~
9 ~~in the Health Care Trust Fund, established for the sole~~
10 ~~purpose of carrying out this part. When the balance of the~~
11 ~~account established in the Health Care Trust Fund for the~~
12 ~~deposit of fees collected as authorized under this section~~
13 ~~exceeds one-third of the annual cost of regulation under this~~
14 ~~part, the excess shall be used to reduce the licensure fees in~~
15 ~~the next year.~~

16 ~~(b) The resident protection fee collected shall be~~
17 ~~deposited in the Resident Protection Trust Fund for the sole~~
18 ~~purpose of paying, in accordance with the provisions of s.~~
19 ~~400.063, for the appropriate alternate placement, care, and~~
20 ~~treatment of a resident removed from a nursing home facility~~
21 ~~on a temporary, emergency basis or for the maintenance and~~
22 ~~care of residents in a nursing home facility pending removal~~
23 ~~and alternate placement.~~

24 (4) Counties or municipalities applying for licenses
25 under this part are exempt from license fees authorized under
26 this section.

27 ~~(5) The license shall be displayed in a conspicuous~~
28 ~~place inside the facility.~~

29 ~~(6) A license shall be valid only in the hands of the~~
30 ~~individual, firm, partnership, association, or corporation to~~
31 ~~whom it is issued and shall not be subject to sale,~~

1 ~~assignment, or other transfer, voluntary or involuntary, nor~~
2 ~~shall a license be valid for any premises other than those for~~
3 ~~which originally issued.~~

4 Section 52. Subsection (1) of section 400.063, Florida
5 Statutes, is amended to read:

6 400.063 Resident Protection Trust Fund.--

7 (1) A Resident Protection Trust Fund shall be
8 established for the purpose of collecting and disbursing funds
9 generated from the license fees and administrative fines as
10 provided for in ss. 393.0673(2), 400.062(3) ~~400.062(3)(b)~~,
11 ~~400.111(1)~~, 400.121(2), and 400.23(8). Such funds shall be
12 for the sole purpose of paying for the appropriate alternate
13 placement, care, and treatment of residents who are removed
14 from a facility licensed under this part or a facility
15 specified in s. 393.0678(1) in which the agency determines
16 that existing conditions or practices constitute an immediate
17 danger to the health, safety, or security of the residents.
18 If the agency determines that it is in the best interest of
19 the health, safety, or security of the residents to provide
20 for an orderly removal of the residents from the facility, the
21 agency may utilize such funds to maintain and care for the
22 residents in the facility pending removal and alternative
23 placement. The maintenance and care of the residents shall be
24 under the direction and control of a receiver appointed
25 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds
26 may be expended in an emergency upon a filing of a petition
27 for a receiver, upon the declaration of a state of local
28 emergency pursuant to s. 252.38(3)(a)5., or upon a duly
29 authorized local order of evacuation of a facility by
30 emergency personnel to protect the health and safety of the
31 residents.

1 Section 53. 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 (1)(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 (a)(e) A signed affidavit disclosing any financial or
30 ownership interest that a controlling interest, as defined in
31 s. 408.803, ~~person or entity described in paragraph (a) or~~

1 ~~paragraph (d)~~ has held in the last 5 years in any entity
2 licensed by this state or any other state to provide health or
3 residential care which has closed voluntarily or
4 involuntarily; has filed for bankruptcy; has had a receiver
5 appointed; has had a license denied, suspended, or revoked; or
6 has had an injunction issued against it which was initiated by
7 a regulatory agency. The affidavit must disclose the reason
8 any such entity was closed, whether voluntarily or
9 involuntarily.

10 (b)~~(f)~~ The total number of beds and the total number
11 of Medicare and Medicaid certified beds.

12 (c)~~(g)~~ Information relating to ~~the number, experience,~~
13 ~~and training of the employees of the facility and of the moral~~
14 ~~character of the applicant and employees which the agency~~
15 ~~requires by rule, including the name and address of any~~
16 ~~nursing home with which the applicant or employees have been~~
17 ~~affiliated through ownership or employment within 5 years of~~
18 ~~the date of the application for a license and the record of~~
19 ~~any criminal convictions involving the applicant and any~~
20 ~~criminal convictions involving an employee if known by the~~
21 ~~applicant after inquiring of the employee. The applicant must~~
22 demonstrate that sufficient numbers of qualified staff, by
23 training or experience, will be employed to properly care for
24 the type and number of residents who will reside in the
25 facility.

26 (d)~~(h)~~ Copies of any civil verdict or judgment
27 involving the applicant rendered within the 10 years preceding
28 the application, relating to medical negligence, violation of
29 residents' rights, or wrongful death. As a condition of
30 licensure, the licensee agrees to provide to the agency copies
31 of any new verdict or judgment involving the applicant,

1 relating to such matters, within 30 days after filing with the
2 clerk of the court. The information required in this
3 paragraph shall be maintained in the facility's licensure file
4 and in an agency database which is available as a public
5 record.

6 ~~(3) The applicant shall submit evidence which~~
7 ~~establishes the good moral character of the applicant,~~
8 ~~manager, supervisor, and administrator. No applicant, if the~~
9 ~~applicant is an individual; no member of a board of directors~~
10 ~~or officer of an applicant, if the applicant is a firm,~~
11 ~~partnership, association, or corporation; and no licensed~~
12 ~~nursing home administrator shall have been convicted, or found~~
13 ~~guilty, regardless of adjudication, of a crime in any~~
14 ~~jurisdiction which affects or may potentially affect residents~~
15 ~~in the facility.~~

16 ~~(4) Each applicant for licensure must comply with the~~
17 ~~following requirements:~~

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

28 ~~(b) The agency may require background screening for a~~
29 ~~member of the board of directors of the licensee or an officer~~
30 ~~or an individual owning 5 percent or more of the licensee if~~
31 ~~the agency has probable cause to believe that such individual~~

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 ~~Financial Services Commission and the Office of Insurance~~
11 ~~Regulation pursuant to chapter 651 as part of an application~~
12 ~~for a certificate of authority to operate a continuing care~~
13 ~~retirement community is acceptable in fulfillment of the~~
14 ~~Department of Law Enforcement and Federal Bureau of~~
15 ~~Investigation background check.~~

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

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

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

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

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

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

14 (2)(6) If the applicant offers continuing care
15 agreements as defined in chapter 651, proof shall be furnished
16 that such applicant has obtained a certificate of authority as
17 required for operation under that chapter.

18 (3)(7) As a condition of licensure, each licensee,
19 except one offering continuing care agreements as defined in
20 chapter 651, must agree to accept recipients of Title XIX of
21 the Social Security Act on a temporary, emergency basis. The
22 persons whom the agency may require such licensees to accept
23 are those recipients of Title XIX of the Social Security Act
24 who are residing in a facility in which existing conditions
25 constitute an immediate danger to the health, safety, or
26 security of the residents of the facility.

27 ~~(4)(8) The agency may not issue a license to a nursing~~
28 ~~home that fails to receive a certificate of need under the~~
29 ~~provisions of ss. 408.031-408.045. It is the intent of the~~
30 ~~Legislature that, in reviewing a certificate-of-need~~
31 ~~application to add beds to an existing nursing home facility,~~

1 preference be given to the application of a licensee who has
2 been awarded a Gold Seal as provided for in s. 400.235, if the
3 applicant otherwise meets the review criteria specified in s.
4 408.035.

5 ~~(5)(9)~~ The agency may develop an abbreviated survey
6 for licensure renewal applicable to a licensee that has
7 continuously operated as a nursing facility since 1991 or
8 earlier, has operated under the same management for at least
9 the preceding 30 months, and has had during the preceding 30
10 months no class I or class II deficiencies.

11 ~~(6)(10)~~ The agency may issue an inactive license to a
12 nursing home that will be temporarily unable to provide
13 services but that is reasonably expected to resume services.
14 Such designation may be made for a period not to exceed 12
15 months but may be renewed by the agency for up to 6 additional
16 months upon demonstration by the licensee of the facility's
17 progress toward reopening. Any request by a licensee that a
18 nursing home become inactive or extend the inactive period
19 must be submitted to the agency, accompanied by appropriate
20 licensure fees, and approved by the agency prior to initiating
21 any suspension of service or notifying residents. The agency
22 may not accept a request for an inactive license if the
23 facility has initiated any suspension of services, notified
24 residents, or initiated closure of the facility. Upon agency
25 approval, the nursing home shall notify residents of any
26 necessary discharge or transfer as provided in s. 400.0255.
27 The end of the inactive period is the licensure expiration
28 date and all licensure fees must be current, paid in full, and
29 may be prorated. Reactivation of an inactive license requires
30 the approval of a renewal application, including payment of
31 licensure fees and inspections by the agency which indicate

1 that all requirements of this part, part II of chapter 408,
2 and applicable rules have been met.

3 ~~(7)(11)~~ As a condition of licensure, each facility
4 must establish and submit with its application a plan for
5 quality assurance and for conducting risk management.

6 ~~(12) The applicant must provide the agency with proof~~
7 ~~of a legal right to occupy the property before a license may~~
8 ~~be issued. Proof may include, but is not limited to, copies of~~
9 ~~warranty deeds, lease or rental agreements, contracts for~~
10 ~~deeds, or quitclaim deeds.~~

11 Section 54. Section 400.102, Florida Statutes, is
12 amended to read:

13 400.102 Action by agency against licensee; grounds.--

14 ~~(1)~~ In addition to the grounds listed in part II of
15 chapter 408, any of the following conditions shall be grounds
16 for action by the agency against a licensee:

17 ~~(a) An intentional or negligent act materially~~
18 ~~affecting the health or safety of residents of the facility;~~

19 ~~(1)(b)~~ Misappropriation or conversion of the property
20 of a resident of the facility;

21 ~~(2)(c)~~ Failure to follow the criteria and procedures
22 provided under part I of chapter 394 relating to the
23 transportation, voluntary admission, and involuntary
24 examination of a nursing home resident or;

25 ~~(d) Violation of provisions of this part or rules~~
26 ~~adopted under this part;~~

27 ~~(3)(e)~~ Fraudulent altering, defacing, or falsifying
28 any medical or nursing home records, or causing or procuring
29 any of these offenses to be committed. or

30 ~~(f) Any act constituting a ground upon which~~
31 ~~application for a license may be denied.~~

1 ~~(2) If the agency has reasonable belief that any of~~
2 ~~such conditions exist, it shall take the following action:~~

3 ~~(a) In the case of an applicant for original~~
4 ~~licensure, denial action as provided in s. 400.121.~~

5 ~~(b) In the case of an applicant for relicensure or a~~
6 ~~current licensee, administrative action as provided in s.~~
7 ~~400.121 or injunctive action as authorized by s. 400.125.~~

8 ~~(c) In the case of a facility operating without a~~
9 ~~license, injunctive action as authorized in s. 400.125.~~

10 Section 55. Section 400.111, Florida Statutes, is
11 amended to read:

12 400.111 Renewal ~~Expiration~~ of license; ~~renewal~~.--

13 ~~(1) A license issued for the operation of a facility,~~
14 ~~unless sooner suspended or revoked, shall expire on the date~~
15 ~~set forth by the agency on the face of the license or 1 year~~
16 ~~from the date of issuance, whichever occurs first. Ninety~~
17 ~~days prior to the expiration date, an application for renewal~~
18 ~~shall be submitted to the agency. A license shall be renewed~~
19 ~~upon the filing of an application on forms furnished by the~~
20 ~~agency if the applicant has first met the requirements~~
21 ~~established under this part and all rules adopted under this~~
22 ~~part. The failure to file an application within the period~~
23 ~~established in this subsection shall result in a late fee~~
24 ~~charged to the licensee by the agency in an amount equal to 50~~
25 ~~percent of the fee in effect on the last preceding regular~~
26 ~~renewal date. A late fee shall be levied for each and every~~
27 ~~day the filing of the license application is delayed, but in~~
28 ~~no event shall such fine aggregate more than \$5,000. If an~~
29 ~~application is received after the required filing date and~~
30 ~~exhibits a hand-canceled postmark obtained from a United~~

31

1 ~~States Post Office dated on or before the required filing~~
2 ~~date, no fine will be levied.~~

3 ~~(2) A licensee against whom a revocation or suspension~~
4 ~~proceeding, or any judicial proceeding instituted by the~~
5 ~~agency under this part, is pending at the time of license~~
6 ~~renewal may be issued a temporary license effective until~~
7 ~~final disposition by the agency of such proceeding. If~~
8 ~~judicial relief is sought from the aforesaid administrative~~
9 ~~order, the court having jurisdiction may issue such orders~~
10 ~~regarding the issuance of a temporary permit during the~~
11 ~~pendency of the judicial proceeding.~~

12 ~~(3) The agency may not renew a license if the~~
13 ~~applicant has failed to pay any fines assessed by final order~~
14 ~~of the agency or final order of the Health Care Financing~~
15 ~~Administration under requirements for federal certification.~~
16 ~~The agency may renew the license of an applicant following the~~
17 ~~assessment of a fine by final order if such fine has been paid~~
18 ~~into an escrow account pending an appeal of a final order.~~

19 ~~(4) In addition to the requirements of part II of~~
20 ~~chapter 408,the licensee shall submit a signed affidavit~~
21 ~~disclosing any financial or ownership interest that a~~
22 ~~controlling interest licensee has held within the last 5 years~~
23 ~~in any entity licensed by the state or any other state to~~
24 ~~provide health or residential care which entity has closed~~
25 ~~voluntarily or involuntarily; has filed for bankruptcy; has~~
26 ~~had a receiver appointed; has had a license denied, suspended,~~
27 ~~or revoked; or has had an injunction issued against it which~~
28 ~~was initiated by a regulatory agency. The affidavit must~~
29 ~~disclose the reason such entity was closed, whether~~
30 ~~voluntarily or involuntarily.~~

31

1 Section 56. Subsections (2) and (5) of section
2 400.1183, Florida Statutes, are amended to read:

3 400.1183 Resident grievance procedures.--

4 (2) Each facility shall maintain records of all
5 grievances and shall report ~~annually~~ to the agency at the time
6 of relicensure the total number of grievances handled, a
7 categorization of the cases underlying the grievances, and the
8 final disposition of the grievances.

9 ~~(5) The agency may impose an administrative fine, in~~
10 ~~accordance with s. 400.121, against a nursing home facility~~
11 ~~for noncompliance with this section.~~

12 Section 57. Section 400.121, Florida Statutes, is
13 amended to read:

14 400.121 Denial or, ~~suspension~~, revocation of license;
15 ~~moratorium on admissions~~; administrative fines; procedure;
16 order to increase staffing.--

17 (1) The agency may ~~deny an application, revoke or~~
18 ~~suspend a license, or~~ impose an administrative fine, not to
19 exceed \$500 per violation per day, against any applicant or
20 licensee for the following violations by the applicant,
21 licensee, or other controlling interest:

22 (a) A violation of any provision of s. 400.102~~(1)~~;

23 (b) A violation of any provision of this part, part II
24 of chapter 408, or applicable rule; or ~~A demonstrated pattern~~
25 ~~of deficient practice;~~

26 ~~(c) Failure to pay any outstanding fines assessed by~~
27 ~~final order of the agency or final order of the Health Care~~
28 ~~Financing Administration pursuant to requirements for federal~~
29 ~~certification. The agency may renew or approve the license of~~
30 ~~an applicant following the assessment of a fine by final order~~

31

1 ~~if such fine has been paid into an escrow account pending an~~
2 ~~appeal of a final order;~~
3 ~~(d) Exclusion from the Medicare or Medicaid program;~~
4 ~~or~~
5 (b)(e) An adverse action by a regulatory agency
6 against any other licensed facility that has a common
7 controlling interest with the licensee or applicant against
8 whom the action under this section is being brought. If the
9 adverse action involves solely the management company, the
10 applicant or licensee shall be given 30 days to remedy before
11 final action is taken. If the adverse action is based solely
12 upon actions by a controlling interest, the applicant or
13 licensee may present factors in mitigation of any proposed
14 penalty based upon a showing that such penalty is
15 inappropriate under the circumstances.
16
17 All hearings shall be held within the county in which the
18 licensee or applicant operates or applies for a license to
19 operate a facility as defined herein.
20 (2) Except as provided in s. 400.23(8), a \$500 fine
21 shall be imposed for each violation. Each day a violation of
22 this part occurs constitutes a separate violation and is
23 subject to a separate fine, but in no event may any fine
24 aggregate more than \$5,000. A fine may be levied pursuant to
25 this section in lieu of and notwithstanding the provisions of
26 s. 400.23. Fines paid shall be deposited in the Resident
27 Protection Trust Fund and expended as provided in s. 400.063.
28 (3) The agency shall revoke or deny a nursing home
29 license if the licensee or controlling interest operates a
30 facility in this state that:
31

1 (a) Has had two moratoria imposed by final order for
2 substandard quality of care, as defined by 42 C.F.R. part 483,
3 within any 30-month period;

4 (b) Is conditionally licensed for 180 or more
5 continuous days;

6 (c) Is cited for two class I deficiencies arising from
7 unrelated circumstances during the same survey or
8 investigation; or

9 (d) Is cited for two class I deficiencies arising from
10 separate surveys or investigations within a 30-month period.

11
12 The licensee may present factors in mitigation of revocation,
13 and the agency may make a determination not to revoke a
14 license based upon a showing that revocation is inappropriate
15 under the circumstances.

16 ~~(4) The agency may issue an order immediately~~
17 ~~suspending or revoking a license when it determines that any~~
18 ~~condition in the facility presents a danger to the health,~~
19 ~~safety, or welfare of the residents in the facility.~~

20 ~~(5)(a) The agency may impose an immediate moratorium~~
21 ~~on admissions to any facility when the agency determines that~~
22 ~~any condition in the facility presents a threat to the health,~~
23 ~~safety, or welfare of the residents in the facility.~~

24 (4)(b) Where the agency has placed a moratorium on
25 admissions on any facility two times within a 7-year period,
26 the agency may revoke ~~suspend~~ the license of the nursing home
27 and the facility's management company, if any. During the
28 suspension, the agency shall take the facility into
29 receivership and shall operate the facility.

30 (5)(6) An action taken by the agency to deny, ~~suspend,~~
31 or revoke a facility's license under this part shall be heard

1 by the Division of Administrative Hearings of the Department
2 of Management Services within 60 days after the assignment of
3 an administrative law judge, unless the time limitation is
4 waived by both parties. The administrative law judge must
5 render a decision within 30 days after receipt of a proposed
6 recommended order.

7 (6)~~(7)~~ The agency is authorized to require a facility
8 to increase staffing beyond the minimum required by law, if
9 the agency has taken administrative action against the
10 facility for care-related deficiencies directly attributable
11 to insufficient staff. Under such circumstances, the facility
12 may request an expedited interim rate increase. The agency
13 shall process the request within 10 days after receipt of all
14 required documentation from the facility. A facility that
15 fails to maintain the required increased staffing is subject
16 to a fine of \$500 per day for each day the staffing is below
17 the level required by the agency.

18 ~~(8) An administrative proceeding challenging an action~~
19 ~~taken by the agency pursuant to this section shall be reviewed~~
20 ~~on the basis of the facts and conditions that resulted in such~~
21 ~~agency action.~~

22 (7)~~(9)~~ Notwithstanding any other provision of law to
23 the contrary, agency action in an administrative proceeding
24 under this section may be overcome by the licensee upon a
25 showing by a preponderance of the evidence to the contrary.

26 (8)~~(10)~~ In addition to any other sanction imposed
27 under this part, in any final order that imposes sanctions,
28 the agency may assess costs related to the investigation and
29 prosecution of the case. Payment of agency costs shall be
30 deposited into the Health Care Trust Fund.

31

1 Section 58. Section 400.125, Florida Statutes, is
2 repealed.

3 Section 59. Subsections (14), (15), (16), and (20) of
4 section 400.141, Florida Statutes, are amended to read:

5 400.141 Administration and management of nursing home
6 facilities.--Every licensed facility shall comply with all
7 applicable standards and rules of the agency and shall:

8 (14) Submit to the agency the information specified in
9 s. 400.071(1)(a)~~s. 400.071(2)(e)~~ for a management company
10 within 30 days after the effective date of the management
11 agreement.

12 (15)(a) At the end of each calendar quarter, submit
13 ~~semiannually~~ to the agency, ~~or more frequently if requested by~~
14 ~~the agency,~~ information regarding facility staff-to-resident
15 ratios, staff turnover, and staff stability, including
16 information regarding certified nursing assistants, licensed
17 nurses, the director of nursing, and the facility
18 administrator. For purposes of this reporting:

19 1.(a) Staff-to-resident ratios must be reported in the
20 categories specified in s. 400.23(3)(a) and applicable rules.
21 The ratio must be reported as an average for the most recent
22 calendar quarter.

23 2.(b) Staff turnover must be reported for the most
24 recent 12-month period ending on the last workday of the most
25 recent calendar quarter prior to the date the information is
26 submitted. The turnover rate must be computed quarterly, with
27 the annual rate being the cumulative sum of the quarterly
28 rates. The turnover rate is the total number of terminations
29 or separations experienced during the quarter, excluding any
30 employee terminated during a probationary period of 3 months
31 or less, divided by the total number of staff employed at the

1 end of the period for which the rate is computed, and
2 expressed as a percentage.

3 3.~~(c)~~ The formula for determining staff stability is
4 the total number of employees that have been employed for more
5 than 12 months, divided by the total number of employees
6 employed at the end of the most recent calendar quarter, and
7 expressed as a percentage.

8 (b)~~(d)~~ A nursing facility that has failed to comply
9 with state minimum-staffing requirements for 2 consecutive
10 days is prohibited from accepting new admissions until the
11 facility has achieved the minimum-staffing requirements for a
12 period of 6 consecutive days. For the purposes of this
13 paragraph, any person who was a resident of the facility and
14 was absent from the facility for the purpose of receiving
15 medical care at a separate location or was on a leave of
16 absence is not considered a new admission. Failure to impose
17 such an admissions moratorium constitutes a class II
18 deficiency.

19 (c)~~(e)~~ A nursing facility that ~~which~~ does not have a
20 conditional license may be cited for failure to comply with
21 the standards in s. 400.23(3)(a) only if it has failed to meet
22 those standards on 2 consecutive days or if it has failed to
23 meet at least 97 percent of those standards on any one day.

24 (d)~~(f)~~ A facility that ~~which~~ has a conditional license
25 must be in compliance with the standards in s. 400.23(3)(a) at
26 all times from the effective date of the conditional license
27 until the effective date of a subsequent standard license.

28
29 Nothing in this section shall limit the agency's ability to
30 impose a deficiency or take other actions if a facility does
31 not have enough staff to meet the residents' needs.

1 (16) Report monthly the number of vacant beds in the
2 facility which are available for resident occupancy on the
3 last day of the month ~~information is reported.~~

4 (20) Maintain general and professional liability
5 insurance coverage in accordance with part II of chapter 408
6 which ~~that~~ is in force at all times. In lieu of general and
7 professional liability insurance coverage, a state-designated
8 teaching nursing home and its affiliated assisted living
9 facilities created under s. 430.80 may demonstrate proof of
10 financial responsibility as provided in s. 430.80(3)(h); the
11 exception provided in this paragraph shall expire July 1,
12 2005.

13
14 Facilities that have been awarded a Gold Seal under the
15 program established in s. 400.235 may develop a plan to
16 provide certified nursing assistant training as prescribed by
17 federal regulations and state rules and may apply to the
18 agency for approval of their program.

19 Section 60. Subsections (4) and (5) of section 400.17,
20 Florida Statutes, are amended to read:

21 400.17 Bribes, kickbacks, certain solicitations
22 prohibited.--

23 (4) Solicitation of contributions of any kind in a
24 threatening, coercive, or unduly forceful manner by or on
25 behalf of a nursing home by any agent, employee, owner, or
26 representative of a nursing home shall be grounds for denial
27 ~~suspension~~, or revocation of the license for any nursing home
28 on behalf of which such contributions were solicited.

29 (5) The admission, maintenance, or treatment of a
30 nursing home resident whose care is supported in whole or in
31 part by state funds may not be made conditional upon the

1 receipt of any manner of contribution or donation from any
2 person. However, this may not be construed to prohibit the
3 offer or receipt of contributions or donations to a nursing
4 home which are not related to the care of a specific resident.
5 Contributions solicited or received in violation of this
6 subsection shall be grounds for denial, ~~suspension,~~ or
7 revocation of a license for any nursing home on behalf of
8 which such contributions were solicited.

9 Section 61. Section 400.179, Florida Statutes, is
10 amended to read:

11 400.179 ~~Sale or transfer of ownership of a nursing~~
12 ~~facility;~~ Liability for Medicaid underpayments and
13 overpayments.--

14 (1) It is the intent of the Legislature to protect the
15 rights of nursing home residents and the security of public
16 funds when a nursing facility is sold or the ownership is
17 transferred.

18 ~~(2) Whenever a nursing facility is sold or the~~
19 ~~ownership is transferred, including leasing, the transferee~~
20 ~~shall make application to the agency for a new license at~~
21 ~~least 90 days prior to the date of transfer of ownership.~~

22 ~~(3) The transferor shall notify the agency in writing~~
23 ~~at least 90 days prior to the date of transfer of ownership.~~
24 ~~The transferor shall be responsible and liable for the lawful~~
25 ~~operation of the nursing facility and the welfare of the~~
26 ~~residents domiciled in the facility until the date the~~
27 ~~transferee is licensed by the agency. The transferor shall be~~
28 ~~liable for any and all penalties imposed against the facility~~
29 ~~for violations occurring prior to the date of transfer of~~
30 ~~ownership.~~

31

1 ~~(4) The transferor shall, prior to transfer of~~
2 ~~ownership, repay or make arrangements to repay to the agency~~
3 ~~or the Department of Children and Family Services any amounts~~
4 ~~owed to the agency or the department. Should the transferor~~
5 ~~fail to repay or make arrangements to repay the amounts owed~~
6 ~~to the agency or the department prior to the transfer of~~
7 ~~ownership, the issuance of a license to the transferee shall~~
8 ~~be delayed until repayment or until arrangements for repayment~~
9 ~~are made.~~

10 (2)~~(5)~~ Because any transfer of a nursing facility may
11 expose the fact that Medicaid may have underpaid or overpaid
12 the transferor, and because in most instances, any such
13 underpayment or overpayment can only be determined following a
14 formal field audit, the liabilities for any such underpayments
15 or overpayments shall be as follows:

16 (a) The Medicaid program shall be liable to the
17 transferor for any underpayments owed during the transferor's
18 period of operation of the facility.

19 (b) Without regard to whether the transferor had
20 leased or owned the nursing facility, the transferor shall
21 remain liable to the Medicaid program for all Medicaid
22 overpayments received during the transferor's period of
23 operation of the facility, regardless of when determined.

24 (c) Where the facility transfer takes any form of a
25 sale of assets, in addition to the transferor's continuing
26 liability for any such overpayments, if the transferor fails
27 to meet these obligations, the transferee shall be liable for
28 all liabilities that can be readily identifiable 90 days in
29 advance of the transfer. Such liability shall continue in
30 succession until the debt is ultimately paid or otherwise
31 resolved. It shall be the burden of the transferee to

1 determine the amount of all such readily identifiable
2 overpayments from the Agency for Health Care Administration,
3 and the agency shall cooperate in every way with the
4 identification of such amounts. Readily identifiable
5 overpayments shall include overpayments that will result from,
6 but not be limited to:

- 7 1. Medicaid rate changes or adjustments;
- 8 2. Any depreciation recapture;
- 9 3. Any recapture of fair rental value system indexing;

10 or

- 11 4. Audits completed by the agency.

12
13 The transferor shall remain liable for any such Medicaid
14 overpayments that were not readily identifiable 90 days in
15 advance of the nursing facility transfer.

16 (d) Where the transfer involves a facility that has
17 been leased by the transferor:

18 1. The transferee shall, as a condition to being
19 issued a license by the agency, acquire, maintain, and provide
20 proof to the agency of a bond with a term of 30 months,
21 renewable annually, in an amount not less than the total of 3
22 months Medicaid payments to the facility computed on the basis
23 of the preceding 12-month average Medicaid payments to the
24 facility.

25 2. A leasehold licensee may meet the requirements of
26 subparagraph 1. by payment of a nonrefundable fee, paid at
27 initial licensure, paid at the time of any subsequent change
28 of ownership, and paid at the time of any subsequent change of
29 ownership, and paid annually thereafter ~~at the time of any~~
30 ~~subsequent annual license renewal~~, in the amount of 2 percent
31 of the total of 3 months' Medicaid payments to the facility

1 computed on the basis of the preceding 12-month average
2 Medicaid payments to the facility. If a preceding 12-month
3 average is not available, projected Medicaid payments may be
4 used. The fee shall be deposited into the Health Care Trust
5 Fund and shall be accounted for separately as a Medicaid
6 nursing home overpayment account. These fees shall be used at
7 the sole discretion of the agency to repay nursing home
8 Medicaid overpayments. Payment of this fee shall not release
9 the licensee from any liability for any Medicaid overpayments,
10 nor shall payment bar the agency from seeking to recoup
11 overpayments from the licensee and any other liable party. As
12 a condition of exercising this lease bond alternative,
13 licensees paying this fee must maintain an existing lease bond
14 through the end of the 30-month term period of that bond. The
15 agency is herein granted specific authority to promulgate all
16 rules pertaining to the administration and management of this
17 account, including withdrawals from the account, subject to
18 federal review and approval. This provision shall take effect
19 upon becoming law and shall apply to any leasehold license
20 application.

21 a. The financial viability of the Medicaid nursing
22 home overpayment account shall be determined by the agency
23 through annual review of the account balance and the amount of
24 total outstanding, unpaid Medicaid overpayments owing from
25 leasehold licensees to the agency as determined by final
26 agency audits.

27 b. The agency, in consultation with the Florida Health
28 Care Association and the Florida Association of Homes for the
29 Aging, shall study and make recommendations on the minimum
30 amount to be held in reserve to protect against Medicaid
31 overpayments to leasehold licensees and on the issue of

1 successor liability for Medicaid overpayments upon sale or
2 transfer of ownership of a nursing facility. The agency shall
3 submit the findings and recommendations of the study to the
4 Governor, the President of the Senate, and the Speaker of the
5 House of Representatives by January 1, 2003.

6 3. The leasehold licensee may meet the bond
7 requirement through other arrangements acceptable to the
8 agency. The agency is herein granted specific authority to
9 promulgate rules pertaining to lease bond arrangements.

10 4. All existing nursing facility licensees, operating
11 the facility as a leasehold, shall acquire, maintain, and
12 provide proof to the agency of the 30-month bond required in
13 subparagraph 1., above, on and after July 1, 1993, for each
14 license renewal.

15 5. It shall be the responsibility of all nursing
16 facility operators, operating the facility as a leasehold, to
17 renew the 30-month bond and to provide proof of such renewal
18 to the agency annually ~~at the time of application for license~~
19 ~~renewal.~~

20 6. Any failure of the nursing facility licensee
21 ~~operator~~ to acquire, maintain, renew annually, or provide
22 proof to the agency shall be grounds for the agency to deny
23 ~~or, cancel, revoke, or suspend~~ the facility license to operate
24 such facility and to take any further action, including, but
25 not limited to, enjoining the facility, asserting a moratorium
26 pursuant to part II of chapter 408, or applying for a
27 receiver, deemed necessary to ensure compliance with this
28 section and to safeguard and protect the health, safety, and
29 welfare of the facility's residents. A lease agreement
30 required as a condition of bond financing or refinancing under
31 s. 154.213 by a health facilities authority or required under

1 s. 159.30 by a county or municipality is not a leasehold for
2 purposes of this paragraph and is not subject to the bond
3 requirement of this paragraph.

4 Section 62. Subsections (1) and (4) of section 400.18,
5 Florida Statutes, are amended to read:

6 400.18 Closing of nursing facility.--

7 (1) ~~Whenever a licensee voluntarily discontinues~~
8 ~~operation, and during the period when it is preparing for such~~
9 ~~discontinuance, it shall inform the agency not less than 90~~
10 ~~days prior to the discontinuance of operation.~~The licensee
11 ~~also~~ shall inform the resident or the next of kin, legal
12 representative, or agency acting on behalf of the resident of
13 the fact, and the proposed time, of ~~such~~ discontinuance of
14 operation and give at least 90 days' notice so that suitable
15 arrangements may be made for the transfer and care of the
16 resident. In the event any resident has no such person to
17 represent him or her, the licensee shall be responsible for
18 securing a suitable transfer of the resident before the
19 discontinuance of operation. The agency shall be responsible
20 for arranging for the transfer of those residents requiring
21 transfer who are receiving assistance under the Medicaid
22 program.

23 ~~(4) Immediately upon discontinuance of operation of a~~
24 ~~facility, the licensee shall surrender the license therefor to~~
25 ~~the agency, and the license shall be canceled.~~

26 Section 63. Subsections (1), (2), and (3) of section
27 400.19, Florida Statutes, are amended to read:

28 400.19 Right of entry and inspection.--

29 (1) In accordance with part II of chapter 408,the
30 agency and any duly designated officer or employee thereof or
31 a member of the State Long-Term Care Ombudsman Council or the

1 local long-term care ombudsman council shall have the right to
2 enter upon and into the premises of any facility licensed
3 pursuant to this part, or any distinct nursing home unit of a
4 hospital licensed under chapter 395 or any freestanding
5 facility licensed under chapter 395 that provides extended
6 care or other long-term care services, at any reasonable time
7 in order to determine the state of compliance with the
8 provisions of this part and rules in force pursuant thereto.
9 ~~The right of entry and inspection shall also extend to any~~
10 ~~premises which the agency has reason to believe is being~~
11 ~~operated or maintained as a facility without a license, but no~~
12 ~~such entry or inspection of any premises shall be made without~~
13 ~~the permission of the owner or person in charge thereof,~~
14 ~~unless a warrant is first obtained from the circuit court~~
15 ~~authorizing same. Any application for a facility license or~~
16 ~~renewal thereof, made pursuant to this part, shall constitute~~
17 ~~permission for and complete acquiescence in any entry or~~
18 ~~inspection of the premises for which the license is sought, in~~
19 ~~order to facilitate verification of the information submitted~~
20 ~~on or in connection with the application; to discover,~~
21 ~~investigate, and determine the existence of abuse or neglect;~~
22 ~~or to elicit, receive, respond to, and resolve complaints.~~ The
23 agency shall, within 60 days after receipt of a complaint made
24 by a resident or resident's representative, complete its
25 investigation and provide to the complainant its findings and
26 resolution.

27 (2) The agency shall coordinate nursing home facility
28 licensing activities and responsibilities of any duly
29 designated officer or employee involved in nursing home
30 facility inspection to assure necessary, equitable, and
31 consistent supervision of inspection personnel without

1 unnecessary duplication of inspections, consultation services,
2 or complaint investigations. ~~To facilitate such coordination,~~
3 ~~all rules promulgated by the agency pursuant to this part~~
4 ~~shall be distributed to nursing homes licensed under s.~~
5 ~~400.062 30 days prior to implementation. This requirement~~
6 ~~does not apply to emergency rules.~~

7 (3) The agency shall every 15 months conduct at least
8 one unannounced inspection to determine compliance by the
9 licensee with statutes, and with rules promulgated under the
10 provisions of those statutes, governing minimum standards of
11 construction, quality and adequacy of care, and rights of
12 residents. The survey shall be conducted every 6 months for
13 the next 2-year period if the facility has been cited for a
14 class I deficiency, has been cited for two or more class II
15 deficiencies arising from separate surveys or investigations
16 within a 60-day period, or has had three or more substantiated
17 complaints within a 6-month period, each resulting in at least
18 one class I or class II deficiency. In addition to any other
19 fees or fines in this part, the agency shall assess a fine for
20 each facility that is subject to the 6-month survey cycle. The
21 fine for the 2-year period shall be \$6,000, ~~one-half to be~~
22 ~~paid at the completion of each survey.~~ The agency may adjust
23 this fine by the change in the Consumer Price Index, based on
24 the 12 months immediately preceding the increase, to cover the
25 cost of the additional surveys. The agency shall verify
26 through subsequent inspection that any deficiency identified
27 during ~~the annual~~ inspection is corrected. However, the
28 agency may verify the correction of a ~~class III or class IV~~
29 deficiency unrelated to resident rights or resident care
30 without reinspecting the facility if adequate written
31 documentation has been received from the facility, which

1 provides assurance that the deficiency has been corrected. The
2 giving or causing to be given of advance notice of such
3 unannounced inspections by an employee of the agency to any
4 unauthorized person shall constitute cause for suspension of
5 not fewer than 5 working days according to the provisions of
6 chapter 110.

7 Section 64. Section 400.191, Florida Statutes, is
8 amended to read:

9 400.191 Availability, distribution, and posting of
10 reports and records.--

11 (1) The agency shall provide information to the public
12 about all of the licensed nursing home facilities operating in
13 the state. The agency shall, within 60 days after an ~~annual~~
14 inspection visit or within 30 days after any interim visit to
15 a facility, send copies of the inspection reports to the local
16 long-term care ombudsman council, the agency's local office,
17 and a public library or the county seat for the county in
18 which the facility is located. The agency may provide
19 electronic access to inspection reports as a substitute for
20 sending copies.

21 (2) The agency shall publish the Guide to Nursing
22 Homes in Florida ~~provide additional information~~ in
23 consumer-friendly printed and electronic formats to assist
24 consumers and their families in comparing and evaluating
25 nursing home facilities.

26 (a) The agency shall provide an Internet site which
27 shall include at least the following information either
28 directly or indirectly through a link to another established
29 site or sites of the agency's choosing:
30
31

- 1 1. A list by name and address of all nursing home
2 facilities in this state, including any prior name a facility
3 was known by during the previous 12-month period.
- 4 2. Whether such nursing home facilities are
5 proprietary or nonproprietary.
- 6 3. The current owner of the facility's license and the
7 year that that entity became the owner of the license.
- 8 4. The name of the owner or owners of each facility
9 and whether the facility is affiliated with a company or other
10 organization owning or managing more than one nursing facility
11 in this state.
- 12 5. The total number of beds in each facility and the
13 most recently available occupancy levels.
- 14 6. The number of private and semiprivate rooms in each
15 facility.
- 16 7. The religious affiliation, if any, of each
17 facility.
- 18 8. The languages spoken by the administrator and staff
19 of each facility.
- 20 9. Whether or not each facility accepts Medicare or
21 Medicaid recipients or insurance, health maintenance
22 organization, Veterans Administration, CHAMPUS program, or
23 workers' compensation coverage.
- 24 10. Recreational and other programs available at each
25 facility.
- 26 11. Special care units or programs offered at each
27 facility.
- 28 12. Whether the facility is a part of a retirement
29 community that offers other services pursuant to part III,
30 part IV, or part V.
- 31

1 13. Survey and deficiency information contained on the
2 Online Survey Certification and Reporting (OSCAR) system of
3 the federal Centers for Medicare and Medicaid Services Health
4 Care Financing Administration, including recertification
5 ~~annual~~ survey, revisit, and complaint survey information, for
6 each facility for the past 30 ~~45~~ months. For noncertified
7 nursing homes, state survey and deficiency information,
8 including licensure ~~annual~~ survey, revisit, and complaint
9 survey information for the past 30 ~~45~~ months shall be
10 provided.

11 14. A summary of the Online Survey Certification and
12 Reporting (OSCAR) data for each facility over the past 30 ~~45~~
13 months. Such summary may include a score, rating, or
14 comparison ranking with respect to other facilities based on
15 the number of citations received by the facility of
16 recertification ~~annual~~, revisit, and complaint surveys; the
17 severity and scope of the citations; and the number of ~~annual~~
18 recertification surveys the facility has had during the past
19 30 ~~45~~ months. The score, rating, or comparison ranking may be
20 presented in either numeric or symbolic form for the intended
21 consumer audience.

22 (b) The agency shall provide the following information
23 in printed form:

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

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

28 3. The current owner or owners of the facility's
29 license and the year that entity became the owner of the
30 license.

31

1 4. The total number of beds, and of private and
2 semiprivate rooms, in each facility.

3 5. The religious affiliation, if any, of each
4 facility.

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

9 7. The languages spoken by the administrator and staff
10 of each facility.

11 8. Whether or not each facility accepts Medicare or
12 Medicaid recipients or insurance, health maintenance
13 organization, Veterans Administration, CHAMPUS program, or
14 workers' compensation coverage.

15 9. Recreational programs, special care units, and
16 other programs available at each facility.

17 10. The Internet address for the site where more
18 detailed information can be seen.

19 11. A statement advising consumers that each facility
20 will have its own policies and procedures related to
21 protecting resident property.

22 12. A summary of the Online Survey Certification and
23 Reporting (OSCAR) data for each facility over the past 30 ~~45~~
24 months. Such summary may include a score, rating, or
25 comparison ranking with respect to other facilities based on
26 the number of citations received by the facility on
27 recertification ~~annual~~, revisit, and complaint surveys; the
28 severity and scope of the citations; the number of citations;
29 and the number of ~~annual~~ recertification surveys the facility
30 has had during the past 30 ~~45~~ months. The score, rating, or
31

1 comparison ranking may be presented in either numeric or
2 symbolic form for the intended consumer audience.

3 (c) For purposes of this subsection, references to the
4 Online Survey Certification and Reporting (OSCAR) system shall
5 refer to any future system that the Centers for Medicare and
6 Medicaid Services ~~Health Care Financing Administration~~
7 develops to replace the current OSCAR system.

8 (d) The agency may provide the following additional
9 information on an Internet site or in printed form as the
10 information becomes available:

- 11 1. The licensure status history of each facility.
- 12 2. The rating history of each facility.
- 13 3. The regulatory history of each facility, which may
14 include federal sanctions, state sanctions, federal fines,
15 state fines, and other actions.
- 16 4. Whether the facility currently possesses the Gold
17 Seal designation awarded pursuant to s. 400.235.
- 18 5. Internet links to the Internet sites of the
19 facilities or their affiliates.

20 (3) Each nursing home facility licensee shall maintain
21 as public information, available upon request, records of all
22 cost and inspection reports pertaining to that facility that
23 have been filed with, or issued by, any governmental agency.
24 Copies of such reports shall be retained in such records for
25 not less than 5 years from the date the reports are filed or
26 issued.

27 (a) The agency shall quarterly publish in the Guide to
28 Nursing Homes in Florida a "Nursing Home Guide Watch List" to
29 assist consumers in evaluating the quality of nursing home
30 care in Florida. The watch list must identify each facility
31 that met the criteria for a conditional licensure status on

1 any day within the quarter covered by the list and each
2 facility that was operating under bankruptcy protection on any
3 day within the quarter. The watch list must include, but is
4 not limited to, the facility's name, address, and ownership;
5 the county in which the facility operates; the license
6 expiration date; the number of licensed beds; a description of
7 the deficiency causing the facility to be placed on the list;
8 any corrective action taken; and the cumulative number of days
9 times the facility had a conditional license since the initial
10 publication of the ~~has been on a~~ watch list. The watch list
11 must include a brief description regarding how to choose a
12 nursing home, the categories of licensure, the agency's
13 inspection process, an explanation of terms used in the watch
14 list, and the addresses and phone numbers of the agency's
15 ~~managed care and health quality assurance field area~~ offices.

16 (b) Upon publication of each quarterly Guide to
17 Nursing Homes in Florida ~~watch list~~, the agency must transmit
18 a copy of all pages listing the facility ~~the watch list~~ to
19 each nursing home facility ~~by mail and must make the watch~~
20 ~~list available on the agency's Internet website.~~

21 (4) Any records of a nursing home facility determined
22 by the agency to be necessary and essential to establish
23 lawful compliance with any rules or standards shall be made
24 available to the agency on the premises of the facility and
25 submitted to the agency. Each facility must submit this
26 information electronically when electronic transmission to the
27 agency is available.

28 (5) Every nursing home facility licensee shall:

29 (a) Post, in a sufficient number of prominent
30 positions in the nursing home so as to be accessible to all
31 residents and to the general public:

1 1. A concise summary of the last inspection report
2 pertaining to the nursing home and issued by the agency, with
3 references to the page numbers of the full reports, noting any
4 deficiencies found by the agency and the actions taken by the
5 licensee to rectify such deficiencies and indicating in such
6 summaries where the full reports may be inspected in the
7 nursing home.

8 2. A copy of the most recent version of all pages
9 listing the facility in the Guide to Nursing Homes in Florida
10 ~~the Florida Nursing Home Guide Watch List.~~

11 (b) Upon request, provide to any person who has
12 completed a written application with an intent to be admitted
13 to, or to any resident of, such nursing home, or to any
14 relative, spouse, or guardian of such person, a copy of the
15 last inspection report pertaining to the nursing home and
16 issued by the agency, provided the person requesting the
17 report agrees to pay a reasonable charge to cover copying
18 costs.

19 (6) The agency may adopt rules as necessary to
20 administer this section.

21 Section 65. Section 400.20, Florida Statutes, is
22 amended to read:

23 400.20 Licensed nursing home administrator
24 required.--~~A~~ No nursing home may not ~~shall~~ operate except
25 under the supervision of a licensed nursing home
26 administrator, and a ~~no~~ person may not ~~shall~~ be a nursing home
27 administrator unless he or she holds ~~is the holder of~~ a
28 current license as provided in chapter 468.

29 Section 66. Subsection (4) of section 400.211, Florida
30 Statutes, is amended to read:

31

1 400.211 Persons employed as nursing assistants;
2 certification requirement.--

3 (4) When employed by a nursing home facility for a
4 12-month period or longer, a nursing assistant, to maintain
5 certification, shall submit to a performance review every 12
6 months and must receive regular inservice education based on
7 the outcome of such reviews. The inservice training must:

8 (a) Be sufficient to ensure the continuing competence
9 of nursing assistants and be in accordance with s. 464.203(7)
10 ~~must be at least 18 hours per year, and may include hours~~
11 ~~accrued under s. 464.203(8);~~

12 (b) Include, at a minimum:

13 1. Techniques for assisting with eating and proper
14 feeding;

15 2. Principles of adequate nutrition and hydration;

16 3. Techniques for assisting and responding to the
17 cognitively impaired resident or the resident with difficult
18 behaviors;

19 4. Techniques for caring for the resident at the
20 end-of-life; and

21 5. Recognizing changes that place a resident at risk
22 for pressure ulcers and falls; and

23 (c) Address areas of weakness as determined in nursing
24 assistant performance reviews and may address the special
25 needs of residents as determined by the nursing home facility
26 staff.

27
28 Costs associated with this training may not be reimbursed from
29 additional Medicaid funding through interim rate adjustments.

30 Section 67. Subsections (2), (7), and (8) of section
31 400.23, Florida Statutes, are amended to read:

1 400.23 Rules; evaluation and deficiencies; licensure
2 status.--

3 (2) Pursuant to the intention of the Legislature, the
4 agency, in consultation with the Department of Health and the
5 Department of Elderly Affairs, shall adopt and enforce rules
6 to implement this part and part II of chapter 408, which shall
7 include reasonable and fair criteria in relation to:

8 (a) The location of the facility and housing
9 conditions that will ensure the health, safety, and comfort of
10 residents, including an adequate call system. In making such
11 rules, the agency shall be guided by criteria recommended by
12 nationally recognized reputable professional groups and
13 associations with knowledge of such subject matters. The
14 agency shall update or revise such criteria as the need
15 arises. The agency may require alterations to a building if it
16 determines that an existing condition constitutes a distinct
17 hazard to life, health, or safety. In performing any
18 inspections of facilities authorized by this part, the agency
19 may enforce the special-occupancy provisions of the Florida
20 Building Code and the Florida Fire Prevention Code which apply
21 to nursing homes. The agency is directed to provide assistance
22 to the Florida Building Commission in updating the
23 construction standards of the code relative to nursing homes.

24 (b) The number and qualifications of all personnel,
25 including management, medical, nursing, and other professional
26 personnel, and nursing assistants, orderlies, and support
27 personnel, having responsibility for any part of the care
28 given residents.

29 (c) All sanitary conditions within the facility and
30 its surroundings, including water supply, sewage disposal,
31

1 food handling, and general hygiene which will ensure the
2 health and comfort of residents.

3 (d) The equipment essential to the health and welfare
4 of the residents.

5 (e) A uniform accounting system.

6 (f) The care, treatment, and maintenance of residents
7 and measurement of the quality and adequacy thereof, based on
8 rules developed under this chapter and the Omnibus Budget
9 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
10 1987), Title IV (Medicare, Medicaid, and Other Health-Related
11 Programs), Subtitle C (Nursing Home Reform), as amended.

12 (g) The preparation and annual update of a
13 comprehensive emergency management plan. The agency shall
14 adopt rules establishing minimum criteria for the plan after
15 consultation with the Department of Community Affairs. At a
16 minimum, the rules must provide for plan components that
17 address emergency evacuation transportation; adequate
18 sheltering arrangements; postdisaster activities, including
19 emergency power, food, and water; postdisaster transportation;
20 supplies; staffing; emergency equipment; individual
21 identification of residents and transfer of records; and
22 responding to family inquiries. The comprehensive emergency
23 management plan is subject to review and approval by the local
24 emergency management agency. During its review, the local
25 emergency management agency shall ensure that the following
26 agencies, at a minimum, are given the opportunity to review
27 the plan: the Department of Elderly Affairs, the Department
28 of Health, the Agency for Health Care Administration, and the
29 Department of Community Affairs. Also, appropriate volunteer
30 organizations must be given the opportunity to review the
31 plan. The local emergency management agency shall complete

1 its review within 60 days and either approve the plan or
2 advise the facility of necessary revisions.

3 (h) The availability, distribution, and posting of
4 reports and records pursuant to s. 400.191 and the Gold Seal
5 Program pursuant to s. 400.235.

6 (7) The agency shall, at least every 15 months,
7 evaluate all nursing home facilities and make a determination
8 as to the degree of compliance by each licensee with the
9 established rules adopted under this part as a basis for
10 assigning a licensure status to that facility. The agency
11 shall base its evaluation on the most recent inspection
12 report, taking into consideration findings from other official
13 reports, surveys, interviews, investigations, and inspections.
14 The agency shall assign a licensure status of standard or
15 conditional to each nursing home.

16 (a) A standard licensure status means that a facility
17 has no class I or class II deficiencies and has corrected all
18 class III deficiencies within the time established by the
19 agency.

20 (b) A conditional licensure status means that a
21 facility, due to the presence of one or more class I or class
22 II deficiencies, or class III deficiencies not corrected
23 within the time established by the agency, is not in
24 substantial compliance at the time of the survey with criteria
25 established under this part or with rules adopted by the
26 agency. If the facility has no class I, class II, or class
27 III deficiencies at the time of the followup survey, a
28 standard licensure status may be assigned.

29 (c) In evaluating the overall quality of care and
30 services and determining whether the facility will receive a
31 conditional or standard license, the agency shall consider the

1 needs and limitations of residents in the facility and the
2 results of interviews and surveys of a representative sampling
3 of residents, families of residents, ombudsman council members
4 in the planning and service area in which the facility is
5 located, guardians of residents, and staff of the nursing home
6 facility.

7 (d) The current licensure status of each facility must
8 be indicated in bold print on the face of the license. A list
9 of the deficiencies of the facility shall be posted in a
10 prominent place that is in clear and unobstructed public view
11 at or near the place where residents are being admitted to
12 that facility. Licensees receiving a conditional licensure
13 status for a facility shall prepare, within 10 working days
14 after receiving notice of deficiencies, a plan for correction
15 of all deficiencies and shall submit the plan to the agency
16 for approval.

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

21 (e)(f) The agency shall adopt rules that:

22 1. Establish uniform procedures for the evaluation of
23 facilities.

24 2. Provide criteria in the areas referenced in
25 paragraph (c).

26 3. Address other areas necessary for carrying out the
27 intent of this section.

28 (8) The agency shall adopt rules pursuant to this part
29 and part II of chapter 408 to provide that, when the criteria
30 established under subsection (2) are not met, such
31 deficiencies shall be classified according to the nature and

1 the scope of the deficiency. The scope shall be cited as
2 isolated, patterned, or widespread. An isolated deficiency is
3 a deficiency affecting one or a very limited number of
4 residents, or involving one or a very limited number of staff,
5 or a situation that occurred only occasionally or in a very
6 limited number of locations. A patterned deficiency is a
7 deficiency where more than a very limited number of residents
8 are affected, or more than a very limited number of staff are
9 involved, or the situation has occurred in several locations,
10 or the same resident or residents have been affected by
11 repeated occurrences of the same deficient practice but the
12 effect of the deficient practice is not found to be pervasive
13 throughout the facility. A widespread deficiency is a
14 deficiency in which the problems causing the deficiency are
15 pervasive in the facility or represent systemic failure that
16 has affected or has the potential to affect a large portion of
17 the facility's residents. The agency shall indicate the
18 classification on the face of the notice of deficiencies as
19 follows:

20 (a) A class I deficiency is a deficiency that the
21 agency determines presents a situation in which immediate
22 corrective action is necessary because the facility's
23 noncompliance has caused, or is likely to cause, serious
24 injury, harm, impairment, or death to a resident receiving
25 care in a facility. The condition or practice constituting a
26 class I violation shall be abated or eliminated immediately,
27 unless a fixed period of time, as determined by the agency, is
28 required for correction. A class I deficiency is subject to a
29 civil penalty of \$10,000 for an isolated deficiency, \$12,500
30 for a patterned deficiency, and \$15,000 for a widespread
31 deficiency. The fine amount shall be doubled for each

1 deficiency if the facility was previously cited for one or
2 more class I or class II deficiencies during the last
3 licensure ~~annual~~ inspection or any inspection or complaint
4 investigation since the last licensure ~~annual~~ inspection. A
5 fine must be levied notwithstanding the correction of the
6 deficiency.

7 (b) A class II deficiency is a deficiency that the
8 agency determines has compromised the resident's ability to
9 maintain or reach his or her highest practicable physical,
10 mental, and psychosocial well-being, as defined by an accurate
11 and comprehensive resident assessment, plan of care, and
12 provision of services. A class II deficiency is subject to a
13 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
14 a patterned deficiency, and \$7,500 for a widespread
15 deficiency. The fine amount shall be doubled for each
16 deficiency if the facility was previously cited for one or
17 more class I or class II deficiencies during the last
18 licensure ~~annual~~ inspection or any inspection or complaint
19 investigation since the last licensure ~~annual~~ inspection. A
20 fine shall be levied notwithstanding the correction of the
21 deficiency.

22 (c) A class III deficiency is a deficiency that the
23 agency determines will result in no more than minimal
24 physical, mental, or psychosocial discomfort to the resident
25 or has the potential to compromise the resident's ability to
26 maintain or reach his or her highest practical physical,
27 mental, or psychosocial well-being, as defined by an accurate
28 and comprehensive resident assessment, plan of care, and
29 provision of services. A class III deficiency is subject to a
30 civil penalty of \$1,000 for an isolated deficiency, \$2,000 for
31 a patterned deficiency, and \$3,000 for a widespread

1 deficiency. The fine amount shall be doubled for each
2 deficiency if the facility was previously cited for one or
3 more class I or class II deficiencies during the last
4 licensure annual inspection or any inspection or complaint
5 investigation since the last licensure annual inspection. A
6 citation for a class III deficiency must specify the time
7 within which the deficiency is required to be corrected. If a
8 class III deficiency is corrected within the time specified,
9 no civil penalty shall be imposed.

10 (d) A class IV deficiency is a deficiency that the
11 agency determines has the potential for causing no more than a
12 minor negative impact on the resident. If the class IV
13 deficiency is isolated, no plan of correction is required.

14 Section 68. Subsections (1) and (2) of section
15 400.241, Florida Statutes, are repealed.

16 Section 69. Subsection (5) of section 400.402, Florida
17 Statutes, is repealed and present subsections (12), (14), and
18 (17) of that section are redesignated as subsections (11),
19 (13), and (16), respectively, and amended to read:

20 400.402 Definitions.--When used in this part, the
21 term:

22 ~~(5) "Applicant" means an individual owner,~~
23 ~~corporation, partnership, firm, association, or governmental~~
24 ~~entity that applies for a license.~~

25 (11)~~(12)~~ "Extended congregate care" means acts beyond
26 those authorized in subsection(16)~~(17)~~that may be performed
27 pursuant to part I of chapter 464 by persons licensed
28 thereunder while carrying out their professional duties, and
29 other supportive services which may be specified by rule. The
30 purpose of such services is to enable residents to age in
31 place in a residential environment despite mental or physical

1 limitations that might otherwise disqualify them from
2 residency in a facility licensed under this part.

3 (13)~~(14)~~ "Limited nursing services" means acts that
4 may be performed pursuant to part I of chapter 464 by persons
5 licensed thereunder while carrying out their professional
6 duties but limited to those acts which the agency ~~department~~
7 specifies by rule. Acts which may be specified by rule as
8 allowable limited nursing services shall be for persons who
9 meet the admission criteria established by the agency
10 ~~department~~ for assisted living facilities and shall not be
11 complex enough to require 24-hour nursing supervision and may
12 include such services as the application and care of routine
13 dressings, and care of casts, braces, and splints.

14 (16)~~(17)~~ "Personal services" means direct physical
15 assistance with or supervision of the activities of daily
16 living and the self-administration of medication and other
17 similar services which the agency ~~department~~ may define by
18 rule. "Personal services" shall not be construed to mean the
19 provision of medical, nursing, dental, or mental health
20 services.

21 Section 70. Section 400.407, Florida Statutes, is
22 amended to read:

23 400.407 License required; fee, display.--

24 (1) The requirements of part II of chapter 408 apply
25 to the provision of services that necessitate licensure
26 pursuant to this part and part II of chapter 408 and to
27 entities licensed by or applying for such licensure from the
28 Agency for Health Care Administration pursuant to this part.
29 However, an applicant for licensure is exempt from s.
30 408.810(10).A license issued by the agency is required for an
31 assisted living facility operating in this state.

1 (2) Separate licenses shall be required for facilities
2 maintained in separate premises, even though operated under
3 the same management. A separate license shall not be required
4 for separate buildings on the same grounds.

5 (3) In addition to the requirements of s. 408.806,
6 each ~~any~~ license granted by the agency must state ~~the maximum~~
7 ~~resident capacity of the facility,~~ the type of care for which
8 the license is granted, ~~the date the license is issued, the~~
9 ~~expiration date of the license, and any other information~~
10 ~~deemed necessary by the agency.~~ Licenses shall be issued for
11 one or more of the following categories of care: standard,
12 extended congregate care, limited nursing services, or limited
13 mental health.

14 (a) A standard license shall be issued to facilities
15 providing one or more of the personal services identified in
16 s. 400.402. Such facilities may also employ or contract with a
17 person licensed under part I of chapter 464 to administer
18 medications and perform other tasks as specified in s.
19 400.4255.

20 (b) An extended congregate care license shall be
21 issued to facilities providing, directly or through contract,
22 services beyond those authorized in paragraph (a), including
23 acts performed pursuant to part I of chapter 464 by persons
24 licensed thereunder, and supportive services defined by rule
25 to persons who otherwise would be disqualified from continued
26 residence in a facility licensed under this part.

27 1. In order for extended congregate care services to
28 be provided in a facility licensed under this part, the agency
29 must first determine that all requirements established in law
30 and rule are met and must specifically designate, on the
31 facility's license, that such services may be provided and

1 whether the designation applies to all or part of a facility.
2 Such designation may be made at the time of initial licensure
3 or relicensure, or upon request in writing by a licensee under
4 this part pursuant to s. 408.806. Notification of approval or
5 denial of such request shall be made in accordance with part
6 II of chapter 408 ~~within 90 days after receipt of such request~~
7 ~~and all necessary documentation~~. Existing facilities
8 qualifying to provide extended congregate care services must
9 have maintained a standard license and may not have been
10 subject to administrative sanctions during the previous 2
11 years, or since initial licensure if the facility has been
12 licensed for less than 2 years, for any of the following
13 reasons:

- 14 a. A class I or class II violation;
- 15 b. Three or more repeat or recurring class III
16 violations of identical or similar resident care standards as
17 specified in rule from which a pattern of noncompliance is
18 found by the agency;
- 19 c. Three or more class III violations that were not
20 corrected in accordance with the corrective action plan
21 approved by the agency;
- 22 d. Violation of resident care standards resulting in a
23 requirement to employ the services of a consultant pharmacist
24 or consultant dietitian;
- 25 e. Denial, ~~suspension~~, or revocation of a license for
26 another facility under this part in which the applicant for an
27 extended congregate care license has at least 25 percent
28 ownership interest; or
- 29 f. Imposition of a moratorium ~~on admissions~~ or
30 initiation of injunctive proceedings.

31

1 2. Facilities that are licensed to provide extended
2 congregate care services shall maintain a written progress
3 report on each person who receives such services, which report
4 describes the type, amount, duration, scope, and outcome of
5 services that are rendered and the general status of the
6 resident's health. A registered nurse, or appropriate
7 designee, representing the agency shall visit such facilities
8 at least quarterly to monitor residents who are receiving
9 extended congregate care services and to determine if the
10 facility is in compliance with this part, part II of chapter
11 408, and ~~with~~ rules that relate to extended congregate care.
12 One of these visits may be in conjunction with the regular
13 survey. The monitoring visits may be provided through
14 contractual arrangements with appropriate community agencies.
15 A registered nurse shall serve as part of the team that
16 inspects such facility. The agency may waive one of the
17 required yearly monitoring visits for a facility that has been
18 licensed for at least 24 months to provide extended congregate
19 care services, if, during the inspection, the registered nurse
20 determines that extended congregate care services are being
21 provided appropriately, and if the facility has no class I or
22 class II violations and no uncorrected class III violations.
23 Before such decision is made, the agency shall consult with
24 the long-term care ombudsman council for the area in which the
25 facility is located to determine if any complaints have been
26 made and substantiated about the quality of services or care.
27 The agency may not waive one of the required yearly monitoring
28 visits if complaints have been made and substantiated.
29 3. Facilities that are licensed to provide extended
30 congregate care services shall:

31

- 1 a. Demonstrate the capability to meet unanticipated
2 resident service needs.
- 3 b. Offer a physical environment that promotes a
4 homelike setting, provides for resident privacy, promotes
5 resident independence, and allows sufficient congregate space
6 as defined by rule.
- 7 c. Have sufficient staff available, taking into
8 account the physical plant and firesafety features of the
9 building, to assist with the evacuation of residents in an
10 emergency, as necessary.
- 11 d. Adopt and follow policies and procedures that
12 maximize resident independence, dignity, choice, and
13 decisionmaking to permit residents to age in place to the
14 extent possible, so that moves due to changes in functional
15 status are minimized or avoided.
- 16 e. Allow residents or, if applicable, a resident's
17 representative, designee, surrogate, guardian, or attorney in
18 fact to make a variety of personal choices, participate in
19 developing service plans, and share responsibility in
20 decisionmaking.
- 21 f. Implement the concept of managed risk.
- 22 g. Provide, either directly or through contract, the
23 services of a person licensed pursuant to part I of chapter
24 464.
- 25 h. In addition to the training mandated in s. 400.452,
26 provide specialized training as defined by rule for facility
27 staff.
- 28 4. Facilities licensed to provide extended congregate
29 care services are exempt from the criteria for continued
30 residency as set forth in rules adopted under s. 400.441.
31 Facilities so licensed shall adopt their own requirements

1 within guidelines for continued residency set forth ~~by the~~
2 ~~department~~ in rule. However, such facilities may not serve
3 residents who require 24-hour nursing supervision. Facilities
4 licensed to provide extended congregate care services shall
5 provide each resident with a written copy of facility policies
6 governing admission and retention.

7 5. The primary purpose of extended congregate care
8 services is to allow residents, as they become more impaired,
9 the option of remaining in a familiar setting from which they
10 would otherwise be disqualified for continued residency. A
11 facility licensed to provide extended congregate care services
12 may also admit an individual who exceeds the admission
13 criteria for a facility with a standard license, if the
14 individual is determined appropriate for admission to the
15 extended congregate care facility.

16 6. Before admission of an individual to a facility
17 licensed to provide extended congregate care services, the
18 individual must undergo a medical examination as provided in
19 s. 400.426(4) and the facility must develop a preliminary
20 service plan for the individual.

21 7. When a facility can no longer provide or arrange
22 for services in accordance with the resident's service plan
23 and needs and the facility's policy, the facility shall make
24 arrangements for relocating the person in accordance with s.
25 400.428(1)(k).

26 8. Failure to provide extended congregate care
27 services may result in denial of extended congregate care
28 license renewal.

29 9. No later than January 1 of each year, ~~the~~
30 ~~department, in consultation with~~ the agency, shall prepare and
31 submit to the Governor, the President of the Senate, the

1 Speaker of the House of Representatives, and the chairs of
2 appropriate legislative committees, a report on the status of,
3 and recommendations related to, extended congregate care
4 services. The status report must include, but need not be
5 limited to, the following information:

6 a. A description of the facilities licensed to provide
7 such services, including total number of beds licensed under
8 this part.

9 b. The number and characteristics of residents
10 receiving such services.

11 c. The types of services rendered that could not be
12 provided through a standard license.

13 d. An analysis of deficiencies cited during licensure
14 inspections.

15 e. The number of residents who required extended
16 congregate care services at admission and the source of
17 admission.

18 f. Recommendations for statutory or regulatory
19 changes.

20 g. The availability of extended congregate care to
21 state clients residing in facilities licensed under this part
22 and in need of additional services, and recommendations for
23 appropriations to subsidize extended congregate care services
24 for such persons.

25 h. Such other information as the department considers
26 appropriate.

27 (c) A limited nursing services license shall be issued
28 to a facility that provides services beyond those authorized
29 in paragraph (a) and as specified in this paragraph.

30 1. In order for limited nursing services to be
31 provided in a facility licensed under this part, the agency

1 must first determine that all requirements established in law
2 and rule are met and must specifically designate, on the
3 facility's license, that such services may be provided. Such
4 designation may be made at the time of initial licensure or
5 relicensure, or upon request in writing by a licensee under
6 this part pursuant to s. 408.806. Notification of approval or
7 denial of such request shall be made in accordance with part
8 II of chapter 408 ~~within 90 days after receipt of such request~~
9 ~~and all necessary documentation~~. Existing facilities
10 qualifying to provide limited nursing services shall have
11 maintained a standard license and may not have been subject to
12 administrative sanctions that affect the health, safety, and
13 welfare of residents for the previous 2 years or since initial
14 licensure if the facility has been licensed for less than 2
15 years.

16 2. Facilities that are licensed to provide limited
17 nursing services shall maintain a written progress report on
18 each person who receives such nursing services, which report
19 describes the type, amount, duration, scope, and outcome of
20 services that are rendered and the general status of the
21 resident's health. A registered nurse representing the agency
22 shall visit such facilities at least twice a year to monitor
23 residents who are receiving limited nursing services and to
24 determine if the facility is in compliance with applicable
25 provisions of this part and with related rules. The monitoring
26 visits may be provided through contractual arrangements with
27 appropriate community agencies. A registered nurse shall also
28 serve as part of the team that inspects such facility.

29 3. A person who receives limited nursing services
30 under this part must meet the admission criteria established
31 by the agency for assisted living facilities. When a resident

1 no longer meets the admission criteria for a facility licensed
2 under this part, arrangements for relocating the person shall
3 be made in accordance with s. 400.428(1)(k), unless the
4 facility is licensed to provide extended congregate care
5 services.

6 (4) In accordance with s. 408.805, an applicant or
7 licensee shall pay a fee for each license application
8 submitted under this part and part II of chapter 408. The
9 amount of the fee shall be established by rule.

10 (a) The biennial license fee required of a facility is
11 \$300 per license, with an additional fee of \$50 per resident
12 based on the total licensed resident capacity of the facility,
13 except that no additional fee will be assessed for beds
14 designated for recipients of optional state supplementation
15 payments provided for in s. 409.212. The total fee may not
16 exceed \$10,000, no part of which shall be returned to the
17 facility. ~~The agency shall adjust the per bed license fee and~~
18 ~~the total licensure fee annually by not more than the change~~
19 ~~in the consumer price index based on the 12 months immediately~~
20 ~~preceding the increase.~~

21 (b) In addition to the total fee assessed under
22 paragraph (a), the agency shall require facilities that are
23 licensed to provide extended congregate care services under
24 this part to pay an additional fee per licensed facility. The
25 amount of the biennial fee shall be \$400 per license, with an
26 additional fee of \$10 per resident based on the total licensed
27 resident capacity of the facility. No part of this fee shall
28 be returned to the facility. ~~The agency may adjust the per bed~~
29 ~~license fee and the annual license fee once each year by not~~
30 ~~more than the average rate of inflation for the 12 months~~
31 ~~immediately preceding the increase.~~

1 (c) In addition to the total fee assessed under
2 paragraph (a), the agency shall require facilities that are
3 licensed to provide limited nursing services under this part
4 to pay an additional fee per licensed facility. The amount of
5 the biennial fee shall be \$250 per license, with an additional
6 fee of \$10 per resident based on the total licensed resident
7 capacity of the facility. No part of this fee shall be
8 returned to the facility. ~~The agency may adjust the per bed~~
9 ~~license fee and the biennial license fee once each year by not~~
10 ~~more than the average rate of inflation for the 12 months~~
11 ~~immediately preceding the increase.~~

12 (5) Counties or municipalities applying for licenses
13 under this part are exempt from the payment of license fees.

14 ~~(6) The license shall be displayed in a conspicuous~~
15 ~~place inside the facility.~~

16 ~~(7) A license shall be valid only in the possession of~~
17 ~~the individual, firm, partnership, association, or corporation~~
18 ~~to which it is issued and shall not be subject to sale,~~
19 ~~assignment, or other transfer, voluntary or involuntary; nor~~
20 ~~shall a license be valid for any premises other than that for~~
21 ~~which originally issued.~~

22 ~~(8) A fee may be charged to a facility requesting a~~
23 ~~duplicate license. The fee shall not exceed the actual cost~~
24 ~~of duplication and postage.~~

25 Section 71. Subsection (1) of section 400.4075,
26 Florida Statutes, is amended to read:

27 400.4075 Limited mental health license.--An assisted
28 living facility that serves three or more mental health
29 residents must obtain a limited mental health license.

30 (1) To obtain a limited mental health license, a
31 facility must hold a standard license as an assisted living

1 facility, must not have any current uncorrected deficiencies
2 or violations, and must ensure that, within 6 months after
3 receiving a limited mental health license, the facility
4 administrator and the staff of the facility who are in direct
5 contact with mental health residents must complete training of
6 no less than 6 hours related to their duties. Such designation
7 may be made at the time of initial licensure or relicensure,
8 or upon request in writing by a licensee under this part
9 pursuant to s. 408.806. Notification of approval or denial of
10 such request shall be made in accordance with part II of
11 chapter 408. The ~~This~~ training required by this subsection
12 shall ~~will~~ be provided by or approved by the Department of
13 Children and Family Services.

14 Section 72. Section 400.408, Florida Statutes, is
15 amended to read:

16 400.408 Unlicensed facilities; referral of person for
17 residency to unlicensed facility; penalties; verification of
18 licensure status.--

19 ~~(1)(a) It is unlawful to own, operate, or maintain an~~
20 ~~assisted living facility without obtaining a license under~~
21 ~~this part.~~

22 ~~(b) Except as provided under paragraph (d), any person~~
23 ~~who owns, operates, or maintains an unlicensed assisted living~~
24 ~~facility commits a felony of the third degree, punishable as~~
25 ~~provided in s. 775.082, s. 775.083, or s. 775.084. Each day of~~
26 ~~continued operation is a separate offense.~~

27 ~~(c) Any person found guilty of violating paragraph (a)~~
28 ~~a second or subsequent time commits a felony of the second~~
29 ~~degree, punishable as provided under s. 775.082, s. 775.083,~~
30 ~~or s. 775.084. Each day of continued operation is a separate~~
31 ~~offense.~~

1 (1)(d) Any person who owns, operates, or maintains an
2 unlicensed assisted living facility due to a change in this
3 part or a modification in ~~department~~ rule within 6 months
4 after the effective date of such change and who, within 10
5 working days after receiving notification from the agency,
6 fails to cease operation or apply for a license under this
7 part commits a felony of the third degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
9 continued operation is a separate offense.

10 ~~(e) Any facility that fails to cease operation after~~
11 ~~agency notification may be fined for each day of noncompliance~~
12 ~~pursuant to s. 400.419.~~

13 ~~(f) When a licensee has an interest in more than one~~
14 ~~assisted living facility, and fails to license any one of~~
15 ~~these facilities, the agency may revoke the license, impose a~~
16 ~~moratorium, or impose a fine pursuant to s. 400.419, on any or~~
17 ~~all of the licensed facilities until such time as the~~
18 ~~unlicensed facility is licensed or ceases operation.~~

19 ~~(g) If the agency determines that an owner is~~
20 ~~operating or maintaining an assisted living facility without~~
21 ~~obtaining a license and determines that a condition exists in~~
22 ~~the facility that poses a threat to the health, safety, or~~
23 ~~welfare of a resident of the facility, the owner is subject to~~
24 ~~the same actions and fines imposed against a licensed facility~~
25 ~~as specified in ss. 400.414 and 400.419.~~

26 ~~(h) Any person aware of the operation of an unlicensed~~
27 ~~assisted living facility must report that facility to the~~
28 ~~agency. The agency shall provide to the department's elder~~
29 ~~information and referral providers a list, by county, of~~
30 ~~licensed assisted living facilities, to assist persons who are~~

31

1 ~~considering an assisted living facility placement in locating~~
2 ~~a licensed facility.~~

3 (2)~~(i)~~ Each field office of the Agency for Health Care
4 Administration shall establish a local coordinating workgroup
5 which includes representatives of local law enforcement
6 agencies, state attorneys, local fire authorities, the
7 Department of Children and Family Services, the district
8 long-term care ombudsman council, and the district human
9 rights advocacy committee to assist in identifying the
10 operation of unlicensed facilities and to develop and
11 implement a plan to ensure effective enforcement of state laws
12 relating to such facilities. The workgroup shall report its
13 findings, actions, and recommendations semiannually to the
14 Director of Health Facility Regulation of the agency.

15 (3)~~(2)~~ It is unlawful to knowingly refer a person for
16 residency to an unlicensed assisted living facility; to an
17 assisted living facility the license of which is under denial
18 or has been suspended or revoked; or to an assisted living
19 facility that has a moratorium pursuant to s. 408.814 ~~on~~
20 ~~admissions~~. Any person who violates this subsection commits a
21 noncriminal violation, punishable by a fine not exceeding \$500
22 as provided in s. 775.083.

23 (a) Any health care practitioner, as defined in s.
24 456.001, who is aware of the operation of an unlicensed
25 facility shall report that facility to the agency. Failure to
26 report a facility that the practitioner knows or has
27 reasonable cause to suspect is unlicensed shall be reported to
28 the practitioner's licensing board.

29 (b) Any hospital or community mental health center
30 licensed under chapter 395 or chapter 394 which knowingly
31

1 discharges a patient or client to an unlicensed facility is
2 subject to sanction by the agency.

3 (c) Any employee of the agency or department, or the
4 Department of Children and Family Services, who knowingly
5 refers a person for residency to an unlicensed facility; to a
6 facility the license of which is under denial or has been
7 suspended or revoked; or to a facility that has a moratorium
8 pursuant to s. 408.814 ~~on admissions~~ is subject to
9 disciplinary action by the agency or department, or the
10 Department of Children and Family Services.

11 (d) The employer of any person who is under contract
12 with the agency or department, or the Department of Children
13 and Family Services, and who knowingly refers a person for
14 residency to an unlicensed facility; to a facility the license
15 of which is under denial or has been suspended or revoked; or
16 to a facility that has a moratorium pursuant to s. 408.814 ~~on~~
17 ~~admissions~~ shall be fined and required to prepare a corrective
18 action plan designed to prevent such referrals.

19 (e) The agency shall provide the department and the
20 Department of Children and Family Services with a list of
21 licensed facilities within each county and shall update the
22 list at least quarterly.

23 (f) At least annually, the agency shall notify, in
24 appropriate trade publications, physicians licensed under
25 chapter 458 or chapter 459, hospitals licensed under chapter
26 395, nursing home facilities licensed under part II of this
27 chapter, and employees of the agency or the department, or the
28 Department of Children and Family Services, who are
29 responsible for referring persons for residency, that it is
30 unlawful to knowingly refer a person for residency to an
31 unlicensed assisted living facility and shall notify them of

1 the penalty for violating such prohibition. The department and
2 the Department of Children and Family Services shall, in turn,
3 notify service providers under contract to the respective
4 departments who have responsibility for resident referrals to
5 facilities. Further, the notice must direct each noticed
6 facility and individual to contact the appropriate agency
7 office in order to verify the licensure status of any facility
8 prior to referring any person for residency. Each notice must
9 include the name, telephone number, and mailing address of the
10 appropriate office to contact.

11 Section 73. Section 400.411, Florida Statutes, is
12 amended to read:

13 400.411 Initial application for license; provisional
14 license.--

15 (1) Each applicant for licensure must comply with all
16 provisions of part II of chapter 408 and the following:

17 ~~Application for a license shall be made to the agency on forms~~
18 ~~furnished by it and shall be accompanied by the appropriate~~
19 ~~license fee.~~

20 ~~(2) The applicant may be an individual owner, a~~
21 ~~corporation, a partnership, a firm, an association, or a~~
22 ~~governmental entity.~~

23 ~~(3) The application must be signed by the applicant~~
24 ~~under oath and must contain the following:~~

25 ~~(a) The name, address, date of birth, and social~~
26 ~~security number of the applicant and the name by which the~~
27 ~~facility is to be known. If the applicant is a firm,~~
28 ~~partnership, or association, the application shall contain the~~
29 ~~name, address, date of birth, and social security number of~~
30 ~~every member thereof. If the applicant is a corporation, the~~
31 ~~application shall contain the corporation's name and address;~~

1 ~~the name, address, date of birth, and social security number~~
2 ~~of each of its directors and officers; and the name and~~
3 ~~address of each person having at least a 5-percent ownership~~
4 ~~interest in the corporation.~~

5 ~~(b) The name and address of any professional service,~~
6 ~~firm, association, partnership, or corporation that is to~~
7 ~~provide goods, leases, or services to the facility if a~~
8 ~~5-percent or greater ownership interest in the service, firm,~~
9 ~~association, partnership, or corporation is owned by a person~~
10 ~~whose name must be listed on the application under paragraph~~
11 ~~(a).~~

12 ~~(c) The name and address of any long-term care~~
13 ~~facility with which the applicant, administrator, or financial~~
14 ~~officer has been affiliated through ownership or employment~~
15 ~~within 5 years of the date of this license application; and a~~
16 ~~signed affidavit disclosing any financial or ownership~~
17 ~~interest that the applicant, or any person listed in paragraph~~
18 ~~(a), holds or has held within the last 5 years in any facility~~
19 ~~licensed under this part, or in any other entity licensed by~~
20 ~~this state or another state to provide health or residential~~
21 ~~care, which facility or entity closed or ceased to operate as~~
22 ~~a result of financial problems, or has had a receiver~~
23 ~~appointed or a license denied, suspended or revoked, or was~~
24 ~~subject to a moratorium on admissions, or has had an~~
25 ~~injunctive proceeding initiated against it.~~

26 ~~(d) A description and explanation of any exclusions,~~
27 ~~permanent suspensions, or terminations of the applicant from~~
28 ~~the Medicare or Medicaid programs. Proof of compliance with~~
29 ~~disclosure of ownership and control interest requirements of~~
30 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
31 ~~this submission.~~

1 ~~(e) The names and addresses of persons of whom the~~
2 ~~agency may inquire as to the character, reputation, and~~
3 ~~financial responsibility of the owner and, if different from~~
4 ~~the applicant, the administrator and financial officer.~~

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

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

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

17 ~~(4) The applicant shall furnish satisfactory proof of~~
18 ~~financial ability to operate and conduct the facility in~~
19 ~~accordance with the requirements of this part. A certificate~~
20 ~~of authority, pursuant to chapter 651, may be provided as~~
21 ~~proof of financial ability.~~

22 ~~(5) If the applicant is a continuing care facility~~
23 ~~certified under chapter 651, a copy of the facility's~~
24 ~~certificate of authority must be provided.~~

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

27 ~~(7) If the applicant is a community residential home,~~
28 ~~the applicant must provide proof that it has met the~~
29 ~~requirements specified in chapter 419.~~

30 ~~(8) The applicant must provide the agency with proof~~
31 ~~of legal right to occupy the property.~~

1 ~~(2)(9)~~ The applicant must furnish proof that the
2 ~~facility has received a satisfactory firesafety inspection.~~
3 The local authority having jurisdiction or the State Fire
4 Marshal must conduct the inspection within 30 days after
5 written request by the applicant.

6 ~~(3)(10)~~ The applicant must furnish documentation of a
7 satisfactory sanitation inspection of the facility by the
8 county health department.

9 ~~(11)~~ The applicant must furnish proof of compliance
10 ~~with level 2 background screening as required under s.~~
11 ~~400.4174.~~

12 ~~(4)(12)~~ A provisional license may be issued to an
13 applicant making initial application for licensure or making
14 application for a change of ownership. A provisional license
15 shall be limited in duration to a specific period of time not
16 to exceed 6 months, as determined by the agency.

17 ~~(5)(13)~~ A county or municipality may not issue an
18 occupational license that is being obtained for the purpose of
19 operating a facility regulated under this part without first
20 ascertaining that the applicant has been licensed to operate
21 such facility at the specified location or locations by the
22 agency. The agency shall furnish to local agencies
23 responsible for issuing occupational licenses sufficient
24 instruction for making such determinations.

25 Section 74. Section 400.412, Florida Statutes, is
26 amended to read:

27 400.412 Sale or transfer of ownership of a
28 facility.--It is the intent of the Legislature to protect the
29 rights of the residents of an assisted living facility when
30 the facility is sold or the ownership thereof is transferred.
31 Therefore, in addition to the requirements of part II of

1 chapter 408, whenever a facility is sold or the ownership
2 thereof is transferred, including leasing:

3 ~~(1) The transferee shall make application to the~~
4 ~~agency for a new license at least 60 days before the date of~~
5 ~~transfer of ownership. The application must comply with the~~
6 ~~provisions of s. 400.411.~~

7 ~~(2)(a) The transferor shall notify the agency in~~
8 ~~writing at least 60 days before the date of transfer of~~
9 ~~ownership.~~

10 ~~(1)(b)~~ The transferee new owner shall notify the
11 residents, in writing, of the change transfer of ownership
12 within 7 days after of his or her receipt of the new license.

13 ~~(3) The transferor shall be responsible and liable~~
14 ~~for:~~

15 ~~(a) The lawful operation of the facility and the~~
16 ~~welfare of the residents domiciled in the facility until the~~
17 ~~date the transferee is licensed by the agency.~~

18 ~~(b) Any and all penalties imposed against the facility~~
19 ~~for violations occurring before the date of transfer of~~
20 ~~ownership unless the penalty imposed is a moratorium on~~
21 ~~admissions or denial of licensure. The moratorium on~~
22 ~~admissions or denial of licensure remains in effect after the~~
23 ~~transfer of ownership, unless the agency has approved the~~
24 ~~transferee's corrective action plan or the conditions which~~
25 ~~created the moratorium or denial have been corrected, and may~~
26 ~~be grounds for denial of license to the transferee in~~
27 ~~accordance with chapter 120.~~

28 ~~(c) Any outstanding liability to the state, unless the~~
29 ~~transferee has agreed, as a condition of sale or transfer, to~~
30 ~~accept the outstanding liabilities and to guarantee payment~~
31 ~~therefor; except that, if the transferee fails to meet these~~

1 ~~obligations, the transferor shall remain liable for the~~
2 ~~outstanding liability.~~

3 (2)(4) The transferor of a facility the license of
4 which is denied pending an administrative hearing shall, as a
5 part of the written change-of-ownership ~~transfer-of-ownership~~
6 contract, advise the transferee that a plan of correction must
7 be submitted by the transferee and approved by the agency at
8 least 7 days before the change ~~transfer~~ of ownership and that
9 failure to correct the condition which resulted in the
10 moratorium pursuant to s. 408.814 ~~on admissions~~ or denial of
11 licensure is grounds for denial of the transferee's license.

12 (5) ~~The transferee must provide the agency with proof~~
13 ~~of legal right to occupy the property before a license may be~~
14 ~~issued. Proof may include, but is not limited to, copies of~~
15 ~~warranty deeds, or copies of lease or rental agreements,~~
16 ~~contracts for deeds, quitclaim deeds, or other such~~
17 ~~documentation.~~

18 Section 75. Section 400.414, Florida Statutes, is
19 amended to read:

20 400.414 Denial or, ~~revocation, or suspension~~ of
21 license; moratorium; ~~imposition of administrative fine;~~
22 grounds.--

23 (1) The agency may deny or, ~~revoke, or suspend~~ any
24 license issued under this part, impose a moratorium, or impose
25 an administrative fine in the manner provided in chapter 120,
26 for any of the following actions by an assisted living
27 facility, for the actions of any person subject to level 2
28 background screening under s. 400.4174, or for the actions of
29 any facility employee in violation of any provision of this
30 part, part II of chapter 408, or applicable rule:

31

1 (a) An intentional or negligent act seriously
2 affecting the health, safety, or welfare of a resident of the
3 facility.

4 (b) The determination by the agency that the owner
5 lacks the financial ability to provide continuing adequate
6 care to residents.

7 (c) Misappropriation or conversion of the property of
8 a resident of the facility.

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

13 (e) A citation of any of the following deficiencies as
14 defined in s. 400.419:

15 1. One or more cited class I deficiencies.

16 2. Three or more cited class II deficiencies.

17 3. Five or more cited class III deficiencies that have
18 been cited on a single survey and have not been corrected
19 within the times specified.

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

27 (g) A determination that an employee, volunteer,
28 administrator, or owner, or person who otherwise has access to
29 the residents of a facility does not meet the criteria
30 specified in s. 435.03(2), and the owner or administrator has
31 not taken action to remove the person. Exemptions from

1 disqualification may be granted as set forth in s. 435.07. No
2 administrative action may be taken against the facility if the
3 person is granted an exemption.

4 ~~(h) Violation of a moratorium.~~

5 ~~(i) Failure of the license applicant, the licensee~~
6 ~~during relicensure, or a licensee that holds a provisional~~
7 ~~license to meet the minimum license requirements of this part,~~
8 ~~or related rules, at the time of license application or~~
9 ~~renewal.~~

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

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

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

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

30 (j)~~(n)~~ Any act constituting a ground upon which
31 application for a license may be denied.

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

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

11 (3) The agency may deny a license to any applicant
12 controlling interest as defined in s. 408.803 that ~~or to any~~
13 ~~officer or board member of an applicant who is a firm,~~
14 ~~corporation, partnership, or association or who owns 5 percent~~
15 ~~or more of the facility, if the applicant, officer, or board~~
16 ~~member~~ has or had a 25-percent or greater financial or
17 ownership interest in any other facility licensed under this
18 part, or in any entity licensed by this state or another state
19 to provide health or residential care, which facility or
20 entity during the 5 years prior to the application for a
21 license closed due to financial inability to operate; had a
22 receiver appointed or a license denied, suspended, or revoked;
23 was subject to a moratorium pursuant to s. 408.814 ~~on~~
24 ~~admissions~~; had an injunctive proceeding initiated against it;
25 or has an outstanding fine assessed under this chapter.

26 (4) The agency shall deny or revoke the license of an
27 assisted living facility that has two or more class I
28 violations that are similar or identical to violations
29 identified by the agency during a survey, inspection,
30 monitoring visit, or complaint investigation occurring within
31 the previous 2 years.

1 (5) An action taken by the agency to suspend, deny, or
2 revoke a facility's license under this part, in which the
3 agency claims that the facility owner or an employee of the
4 facility has threatened the health, safety, or welfare of a
5 resident of the facility be heard by the Division of
6 Administrative Hearings of the Department of Management
7 Services within 120 days after receipt of the facility's
8 request for a hearing, unless that time limitation is waived
9 by both parties. The administrative law judge must render a
10 decision within 30 days after receipt of a proposed
11 recommended order.

12 (6) The agency shall provide to the Division of Hotels
13 and Restaurants of the Department of Business and Professional
14 Regulation, on a monthly basis, a list of those assisted
15 living facilities that have had their licenses denied,
16 ~~suspended~~, or revoked or that are involved in an appellate
17 proceeding pursuant to s. 120.60 related to the denial,
18 ~~suspension~~, or revocation of a license.

19 (7) Agency notification of a license ~~suspension or~~
20 revocation, or denial of a license renewal, shall be posted
21 and visible to the public at the facility.

22 ~~(8) The agency may issue a temporary license pending~~
23 ~~final disposition of a proceeding involving the suspension or~~
24 ~~revocation of an assisted living facility license.~~

25 Section 76. Section 400.417, Florida Statutes, is
26 amended to read:

27 400.417 Expiration of license; renewal; conditional
28 license.--

29 ~~(1) Biennial licenses, unless sooner suspended or~~
30 ~~revoked, shall expire 2 years from the date of issuance.~~
31 Limited nursing, extended congregate care, and limited mental

1 health licenses shall expire at the same time as the
2 facility's standard license, regardless of when issued. ~~The~~
3 ~~agency shall notify the facility at least 120 days prior to~~
4 ~~expiration that a renewal license is necessary to continue~~
5 ~~operation. The notification must be provided electronically or~~
6 ~~by mail delivery. Ninety days prior to the expiration date, an~~
7 ~~application for renewal shall be submitted to the agency. Fees~~
8 ~~must be prorated. The failure to file a timely renewal~~
9 ~~application shall result in a late fee charged to the facility~~
10 ~~in an amount equal to 50 percent of the current fee.~~

11 (2) A license shall be renewed in accordance with part
12 II of chapter 408 ~~within 90 days upon the timely filing of an~~
13 ~~application on forms furnished by the agency and the provision~~
14 ~~of satisfactory proof of ability to operate and conduct the~~
15 ~~facility in accordance with the requirements of this part and~~
16 ~~adopted rules, including proof that the facility has received~~
17 ~~a satisfactory firesafety inspection, conducted by the local~~
18 ~~authority having jurisdiction or the State Fire Marshal,~~
19 ~~within the preceding 12 months and an affidavit of compliance~~
20 ~~with the background screening requirements of s. 400.4174.~~

21 (3) In addition to the requirements of part II of
22 chapter 408, ~~An applicant for renewal of a license who has~~
23 ~~complied with the provisions of s. 400.411 with respect to~~
24 ~~proof of financial ability to operate shall not be required to~~
25 ~~provide further proof unless the facility or any other~~
26 ~~facility owned or operated in whole or in part by the same~~
27 ~~person has demonstrated financial instability as provided~~
28 ~~under s. 400.447(2) or unless the agency suspects that the~~
29 ~~facility is not financially stable as a result of the annual~~
30 ~~survey or complaints from the public or a report from the~~
31 ~~State Long-Term Care Ombudsman Council.~~each facility must

1 report to the agency any adverse court action concerning the
2 facility's financial viability, within 7 days after its
3 occurrence. The agency shall have access to books, records,
4 and any other financial documents maintained by the facility
5 to the extent necessary to determine the facility's financial
6 stability. ~~A license for the operation of a facility shall not
7 be renewed if the licensee has any outstanding fines assessed
8 pursuant to this part which are in final order status.~~

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

16 (4)~~(5)~~ A conditional license may be issued to an
17 applicant for license renewal if the applicant fails to meet
18 all standards and requirements for licensure. A conditional
19 license issued under this subsection shall be limited in
20 duration to a specific period of time not to exceed 6 months,
21 as determined by the agency, and shall be accompanied by an
22 agency-approved plan of correction.

23 (5)~~(6)~~ When an extended care or limited nursing
24 license is requested during a facility's biennial license
25 period, the fee shall be prorated in order to permit the
26 additional license to expire at the end of the biennial
27 license period. The fee shall be calculated as of the date the
28 additional license application is received by the agency.

29 (6)~~(7)~~ The agency ~~department~~ may by rule establish
30 renewal procedures, identify forms, and specify documentation
31

1 necessary to administer this section and part II of chapter
2 408.

3 Section 77. Section 400.415, Florida Statutes, is
4 repealed.

5 Section 78. Section 400.4174, Florida Statutes, is
6 amended to read:

7 400.4174 Background screening; exemptions.--

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

12 1. ~~The facility owner if an individual, the~~
13 ~~administrator, and the financial officer.~~

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

1 ~~relationship to the facility satisfies the requirements of~~
2 ~~this subparagraph.~~

3 ~~(b) Proof of compliance with level 2 screening~~
4 ~~standards which has been submitted within the previous 5 years~~
5 ~~to meet any facility or professional licensure requirements of~~
6 ~~the agency or the Department of Health satisfies the~~
7 ~~requirements of this subsection, provided that such proof is~~
8 ~~accompanied, under penalty of perjury, by an affidavit of~~
9 ~~compliance with the provisions of chapter 435. Proof of~~
10 ~~compliance with the background screening requirements of the~~
11 ~~Financial Services Commission and the Office of Insurance~~
12 ~~Regulation for applicants for a certificate of authority to~~
13 ~~operate a continuing care retirement community under chapter~~
14 ~~651, submitted within the last 5 years, satisfies the~~
15 ~~Department of Law Enforcement and Federal Bureau of~~
16 ~~Investigation portions of a level 2 background check.~~

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

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

1 (1)~~(a)~~ Proof of compliance with level 1 screening
2 requirements obtained to meet any professional license
3 requirements in this state is provided and accompanied, under
4 penalty of perjury, by a copy of the person's current
5 professional license and an affidavit of current compliance
6 with the background screening requirements.

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

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

23 Section 79. Section 400.4176, Florida Statutes, is
24 amended to read:

25 400.4176 Notice of change of administrator.--If,
26 during the period for which a license is issued, the owner
27 changes administrators, the owner must notify the agency of
28 the change within 10 days and provide documentation within 90
29 days that the new administrator has completed the applicable
30 core educational requirements under s. 400.452. ~~Background~~
31

1 ~~screening shall be completed on any new administrator as~~
2 ~~specified in s. 400.4174.~~

3 Section 80. Subsection (7) of section 400.4178,
4 Florida Statutes, is repealed.

5 Section 81. Section 400.418, Florida Statutes, is
6 amended to read:

7 400.418 Disposition of fees and administrative
8 fines.--

9 ~~(1) Income from license fees, inspection fees, late~~
10 ~~fees, and administrative fines collected under this part~~
11 ~~generated pursuant to ss. 400.407, 400.408, 400.417, 400.419,~~
12 ~~and 400.431 shall be deposited in the Health Care Trust Fund~~
13 ~~administered by the agency. Such funds shall be directed to~~
14 and used by the agency for the following purposes:

15 (1)(a) Up to 50 percent of the trust funds accrued
16 each fiscal year under this part may be used to offset the
17 expenses of receivership, pursuant to s. 400.422, if the court
18 determines that the income and assets of the facility are
19 insufficient to provide for adequate management and operation.

20 (2)(b) An amount of \$5,000 of the trust funds accrued
21 each year under this part shall be allocated to pay for
22 inspection-related physical and mental health examinations
23 requested by the agency pursuant to s. 400.426 for residents
24 who are either recipients of supplemental security income or
25 have monthly incomes not in excess of the maximum combined
26 federal and state cash subsidies available to supplemental
27 security income recipients, as provided for in s. 409.212.
28 Such funds shall only be used where the resident is ineligible
29 for Medicaid.

30 (3)(c) Any trust funds accrued each year under this
31 part and not used for the purposes specified in paragraphs (a)

1 and (b) shall be used to offset the costs of the licensure
2 program, ~~including the costs of conducting background~~
3 ~~investigations,~~ verifying information submitted, defraying the
4 costs of processing the names of applicants, and conducting
5 inspections and monitoring visits pursuant to this part and
6 part II of chapter 408.

7 ~~(2) Income from fees generated pursuant to s.~~
8 ~~400.441(5) shall be deposited in the Health Care Trust Fund~~
9 ~~and used to offset the costs of printing and postage.~~

10 Section 82. Section 400.419, Florida Statutes, is
11 amended to read:

12 400.419 Violations; imposition of administrative
13 fines; grounds.--

14 (1) The agency shall impose an administrative fine in
15 the manner provided in chapter 120 for a violation of any
16 provision of this part, part II of chapter 408, or applicable
17 rule any of the actions or violations as set forth within this
18 section by an assisted living facility, for the actions of any
19 person subject to level 2 background screening under s.
20 400.4174, for the actions of any facility employee, or for an
21 intentional or negligent act seriously affecting the health,
22 safety, or welfare of a resident of the facility.

23 (2) Each violation of this part and adopted rules
24 shall be classified according to the nature of the violation
25 and the gravity of its probable effect on facility residents.
26 The agency shall indicate the classification on the written
27 notice of the violation as follows:

28 (a) Class "I" violations are those conditions or
29 occurrences related to the operation and maintenance of a
30 facility or to the personal care of residents which the agency
31 determines present an imminent danger to the residents or

1 | guests of the facility or a substantial probability that death
2 | or serious physical or emotional harm would result therefrom.
3 | The condition or practice constituting a class I violation
4 | shall be abated or eliminated within 24 hours, unless a fixed
5 | period, as determined by the agency, is required for
6 | correction. The agency shall impose an administrative fine for
7 | a cited class I violation in an amount not less than \$5,000
8 | and not exceeding \$10,000 for each violation. A fine may be
9 | levied notwithstanding the correction of the violation.

10 | (b) Class "II" violations are those conditions or
11 | occurrences related to the operation and maintenance of a
12 | facility or to the personal care of residents which the agency
13 | determines directly threaten the physical or emotional health,
14 | safety, or security of the facility residents, other than
15 | class I violations. The agency shall impose an administrative
16 | fine for a cited class II violation in an amount not less than
17 | \$1,000 and not exceeding \$5,000 for each violation. A fine
18 | shall be levied notwithstanding the correction of the
19 | violation.

20 | (c) Class "III" violations are those conditions or
21 | occurrences related to the operation and maintenance of a
22 | facility or to the personal care of residents which the agency
23 | determines indirectly or potentially threaten the physical or
24 | emotional health, safety, or security of facility residents,
25 | other than class I or class II violations. The agency shall
26 | impose an administrative fine for a cited class III violation
27 | in an amount not less than \$500 and not exceeding \$1,000 for
28 | each violation. A citation for a class III violation must
29 | specify the time within which the violation is required to be
30 | corrected. If a class III violation is corrected within the
31 |

1 time specified, no fine may be imposed, unless it is a
2 repeated offense.

3 (d) Class "IV" violations are those conditions or
4 occurrences related to the operation and maintenance of a
5 building or to required reports, forms, or documents that do
6 not have the potential of negatively affecting residents.
7 These violations are of a type that the agency determines do
8 not threaten the health, safety, or security of residents of
9 the facility. The agency shall impose an administrative fine
10 for a cited class IV violation in an amount not less than \$100
11 and not exceeding \$200 for each violation. A citation for a
12 class IV violation must specify the time within which the
13 violation is required to be corrected. If a class IV violation
14 is corrected within the time specified, no fine shall be
15 imposed. Any class IV violation that is corrected during the
16 time an agency survey is being conducted will be identified as
17 an agency finding and not as a violation.

18 (3) In determining if a penalty is to be imposed and
19 in fixing the amount of the fine, the agency shall consider
20 the following factors:

21 (a) The gravity of the violation, including the
22 probability that death or serious physical or emotional harm
23 to a resident will result or has resulted, the severity of the
24 action or potential harm, and the extent to which the
25 provisions of the applicable laws or rules were violated.

26 (b) Actions taken by the owner or administrator to
27 correct violations.

28 (c) Any previous violations.

29 (d) The financial benefit to the facility of
30 committing or continuing the violation.

31 (e) The licensed capacity of the facility.

1 (4) Each day of continuing violation after the date
2 fixed for termination of the violation, as ordered by the
3 agency, constitutes an additional, separate, and distinct
4 violation.

5 (5) Any action taken to correct a violation shall be
6 documented in writing by the owner or administrator of the
7 facility and verified through followup visits by agency
8 personnel. The agency may impose a fine and, in the case of an
9 owner-operated facility, revoke or deny a facility's license
10 when a facility administrator fraudulently misrepresents
11 action taken to correct a violation.

12 ~~(6) For fines that are upheld following administrative~~
13 ~~or judicial review, the violator shall pay the fine, plus~~
14 ~~interest at the rate as specified in s. 55.03, for each day~~
15 ~~beyond the date set by the agency for payment of the fine.~~

16 ~~(7) Any unlicensed facility that continues to operate~~
17 ~~after agency notification is subject to a \$1,000 fine per day.~~

18 ~~(8) Any licensed facility whose owner or administrator~~
19 ~~concurrently operates an unlicensed facility shall be subject~~
20 ~~to an administrative fine of \$5,000 per day.~~

21 ~~(9) Any facility whose owner fails to apply for a~~
22 ~~change of ownership license in accordance with s. 400.412 and~~
23 ~~operates the facility under the new ownership is subject to a~~
24 ~~fine of \$5,000.~~

25 (6)~~(10)~~ In addition to any administrative fines
26 imposed, the agency may assess a survey fee, equal to the
27 lesser of one half of the facility's biennial license and bed
28 fee or \$500, to cover the cost of conducting initial complaint
29 investigations that result in the finding of a violation that
30 was the subject of the complaint or monitoring visits

31

1 conducted under s. 400.428(3)(c) to verify the correction of
2 the violations.

3 (7)~~(11)~~ The agency, as an alternative to or in
4 conjunction with an administrative action against a facility
5 for violations of this part and adopted rules, shall make a
6 reasonable attempt to discuss each violation and recommended
7 corrective action with the owner or administrator of the
8 facility, prior to written notification. The agency, instead
9 of fixing a period within which the facility shall enter into
10 compliance with standards, may request a plan of corrective
11 action from the facility which demonstrates a good faith
12 effort to remedy each violation by a specific date, subject to
13 the approval of the agency.

14 ~~(12) Administrative fines paid by any facility under
15 this section shall be deposited into the Health Care Trust
16 Fund and expended as provided in s. 400.418.~~

17 (8)~~(13)~~ The agency shall develop and disseminate an
18 annual list of all facilities sanctioned or fined \$5,000 or
19 more for violations of state standards, the number and class
20 of violations involved, the penalties imposed, and the current
21 status of cases. The list shall be disseminated, at no charge,
22 to the Department of Elderly Affairs, the Department of
23 Health, the Department of Children and Family Services, the
24 area agencies on aging, the Florida Statewide Advocacy
25 Council, and the state and local ombudsman councils. The
26 Department of Children and Family Services shall disseminate
27 the list to service providers under contract to the department
28 who are responsible for referring persons to a facility for
29 residency. The agency may charge a fee commensurate with the
30 cost of printing and postage to other interested parties
31 requesting a copy of this list.

1 Section 83. Subsections (2) and (3) of section 400.42,
2 Florida Statutes, are amended to read:

3 400.42 Certain solicitation prohibited; third-party
4 supplementation.--

5 (2) Solicitation of contributions of any kind in a
6 threatening, coercive, or unduly forceful manner by or on
7 behalf of an assisted living facility or facilities by any
8 agent, employee, owner, or representative of any assisted
9 living facility or facilities is grounds for denial,
10 ~~suspension~~, or revocation of the license of the assisted
11 living facility or facilities by or on behalf of which such
12 contributions were solicited.

13 (3) The admission or maintenance of assisted living
14 facility residents whose care is supported, in whole or in
15 part, by state funds may not be conditioned upon the receipt
16 of any manner of contribution or donation from any person. The
17 solicitation or receipt of contributions in violation of this
18 subsection is grounds for denial, ~~suspension~~, or revocation of
19 license, as provided in s. 400.414, for any assisted living
20 facility by or on behalf of which such contributions were
21 solicited.

22 Section 84. Section 400.421, Florida Statutes, is
23 repealed.

24 Section 85. Subsection (10) of section 400.423,
25 Florida Statutes, is amended to read:

26 400.423 Internal risk management and quality assurance
27 program; adverse incidents and reporting requirements.--

28 (10) The agency ~~Department of Elderly Affairs~~ may
29 adopt rules necessary to administer this section.

30 Section 86. Subsection (8) of section 400.424, Florida
31 Statutes, is amended to read:

1 400.424 Contracts.--

2 (8) The agency ~~department~~ may by rule clarify terms,
3 establish procedures, clarify refund policies and contract
4 provisions, and specify documentation as necessary to
5 administer this section.

6 Section 87. Subsection (3) of section 400.4255,
7 Florida Statutes, is amended to read:

8 400.4255 Use of personnel; emergency care.--

9 (3) Facility staff may withhold or withdraw
10 cardiopulmonary resuscitation if presented with an order not
11 to resuscitate executed pursuant to s. 401.45. The agency
12 ~~department~~ shall adopt rules providing for the implementation
13 of such orders. Facility staff and facilities shall not be
14 subject to criminal prosecution or civil liability, nor be
15 considered to have engaged in negligent or unprofessional
16 conduct, for withholding or withdrawing cardiopulmonary
17 resuscitation pursuant to such an order and applicable rules
18 ~~adopted by the department~~. The absence of an order to
19 resuscitate executed pursuant to s. 401.45 does not preclude a
20 physician from withholding or withdrawing cardiopulmonary
21 resuscitation as otherwise permitted by law.

22 Section 88. Subsection (6) of section 400.4256,
23 Florida Statutes, is amended to read:

24 400.4256 Assistance with self-administration of
25 medication.--

26 (6) The agency ~~department~~ may by rule establish
27 facility procedures and interpret terms as necessary to
28 implement this section.

29 Section 89. Subsection (8) of section 400.427, Florida
30 Statutes, is amended to read:

31 400.427 Property and personal affairs of residents.--

1 (8) The agency ~~department~~ may by rule clarify terms
2 and specify procedures and documentation necessary to
3 administer the provisions of this section relating to the
4 proper management of residents' funds and personal property
5 and the execution of surety bonds.

6 Section 90. Subsection (4) of section 400.4275,
7 Florida Statutes, is amended to read:

8 400.4275 Business practice; personnel records;
9 liability insurance.--The assisted living facility shall be
10 administered on a sound financial basis that is consistent
11 with good business practices.

12 (4) The agency ~~department~~ may by rule clarify terms,
13 establish requirements for financial records, accounting
14 procedures, personnel procedures, insurance coverage, and
15 reporting procedures, and specify documentation as necessary
16 to implement the requirements of this section.

17 Section 91. Subsections (1) and (5) of section
18 400.431, Florida Statutes, are amended to read:

19 400.431 Closing of facility; notice; penalty.--

20 (1) ~~Whenever a facility voluntarily discontinues~~
21 ~~operation, it shall inform the agency in writing at least 90~~
22 ~~days prior to the discontinuance of operation.~~ The facility
23 shall also inform each resident or the next of kin, legal
24 representative, or agency acting on each resident's behalf, of
25 the fact and the proposed time of such discontinuance,
26 following the notification requirements provided in s.
27 400.428(1)(k). In the event a resident has no person to
28 represent him or her, the facility shall be responsible for
29 referral to an appropriate social service agency for
30 placement.

31

1 (5) The agency may levy a fine in an amount no greater
2 than \$5,000 upon each person or business entity that owns any
3 interest in a facility that terminates operation without
4 providing notice to the agency and the residents of the
5 facility at least 30 days before operation ceases. This fine
6 shall not be levied against any facility involuntarily closed
7 at the initiation of the agency. The agency shall use the
8 proceeds of the fines to operate the facility until all
9 residents of the facility are relocated ~~and shall deposit any~~
10 ~~balance of the proceeds into the Health Care Trust Fund~~
11 ~~established pursuant to s. 400.418.~~

12 Section 92. Section 400.434, Florida Statutes, is
13 amended to read:

14 400.434 Right of entry and inspection.--Any duly
15 designated officer or employee of the department, the
16 Department of Children and Family Services, ~~the agency,~~the
17 state or local fire marshal, ~~or~~ a member of the state or local
18 long-term care ombudsman council, or the agency in accordance
19 with s. 408.811 shall have the right to enter unannounced upon
20 and into the premises of any facility licensed pursuant to
21 this part in order to determine the state of compliance with
22 the provisions of this part, part II of chapter 408,and
23 applicable of rules or standards in force pursuant thereto.
24 ~~The right of entry and inspection shall also extend to any~~
25 ~~premises which the agency has reason to believe is being~~
26 ~~operated or maintained as a facility without a license; but no~~
27 ~~such entry or inspection of any premises may be made without~~
28 ~~the permission of the owner or person in charge thereof,~~
29 ~~unless a warrant is first obtained from the circuit court~~
30 ~~authorizing such entry. The warrant requirement shall extend~~
31 ~~only to a facility which the agency has reason to believe is~~

1 ~~being operated or maintained as a facility without a license.~~
2 ~~Any application for a license or renewal thereof made pursuant~~
3 ~~to this part shall constitute permission for, and complete~~
4 ~~acquiescence in, any entry or inspection of the premises for~~
5 ~~which the license is sought, in order to facilitate~~
6 ~~verification of the information submitted on or in connection~~
7 ~~with the application; to discover, investigate, and determine~~
8 ~~the existence of abuse or neglect; or to elicit, receive,~~
9 ~~respond to, and resolve complaints. Any current valid license~~
10 ~~shall constitute unconditional permission for, and complete~~
11 ~~acquiescence in, any entry or inspection of the premises by~~
12 ~~authorized personnel.~~ The agency shall retain the right of
13 entry and inspection of facilities that have had a license
14 revoked or suspended within the previous 24 months, to ensure
15 that the facility is not operating unlawfully. However, before
16 entering the facility, a statement of probable cause must be
17 filed with the director of the agency, who must approve or
18 disapprove the action within 48 hours. Probable cause shall
19 include, but is not limited to, evidence that the facility
20 holds itself out to the public as a provider of personal care
21 services or the receipt of a complaint by the long-term care
22 ombudsman council about the facility. Data collected by the
23 state or local long-term care ombudsman councils or the state
24 or local advocacy councils may be used by the agency in
25 investigations involving violations of regulatory standards.

26 Section 93. Subsection (1) of section 400.435, Florida
27 Statutes, is repealed.

28 Section 94. Section 400.441, Florida Statutes, is
29 amended to read:

30 400.441 Rules establishing standards.--

31

1 (1) It is the intent of the Legislature that rules
2 published and enforced pursuant to this section shall include
3 criteria by which a reasonable and consistent quality of
4 resident care and quality of life may be ensured and the
5 results of such resident care may be demonstrated. Such rules
6 shall also ensure a safe and sanitary environment that is
7 residential and noninstitutional in design or nature. It is
8 further intended that reasonable efforts be made to
9 accommodate the needs and preferences of residents to enhance
10 the quality of life in a facility. In order to provide safe
11 and sanitary facilities and the highest quality of resident
12 care accommodating the needs and preferences of residents, the
13 agency ~~department~~, in consultation with the department ~~agency~~,
14 the Department of Children and Family Services, and the
15 Department of Health, shall adopt rules, policies, and
16 procedures to administer this part and part II of chapter 408,
17 which must include reasonable and fair minimum standards in
18 relation to:

19 (a) The requirements for and maintenance of
20 facilities, not in conflict with the provisions of chapter
21 553, relating to plumbing, heating, cooling, lighting,
22 ventilation, living space, and other housing conditions, which
23 will ensure the health, safety, and comfort of residents and
24 protection from fire hazard, including adequate provisions for
25 fire alarm and other fire protection suitable to the size of
26 the structure. Uniform firesafety standards shall be
27 established and enforced by the State Fire Marshal in
28 cooperation with the agency, the department, and the
29 Department of Health.

30 1. Evacuation capability determination.--
31

1 a. The provisions of the National Fire Protection
2 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3 for determining the ability of the residents, with or without
4 staff assistance, to relocate from or within a licensed
5 facility to a point of safety as provided in the fire codes
6 adopted herein. An evacuation capability evaluation for
7 initial licensure shall be conducted within 6 months after the
8 date of licensure. For existing licensed facilities that are
9 not equipped with an automatic fire sprinkler system, the
10 administrator shall evaluate the evacuation capability of
11 residents at least annually. The evacuation capability
12 evaluation for each facility not equipped with an automatic
13 fire sprinkler system shall be validated, without liability,
14 by the State Fire Marshal, by the local fire marshal, or by
15 the local authority having jurisdiction over firesafety,
16 before the license renewal date. If the State Fire Marshal,
17 local fire marshal, or local authority having jurisdiction
18 over firesafety has reason to believe that the evacuation
19 capability of a facility as reported by the administrator may
20 have changed, it may, with assistance from the facility
21 administrator, reevaluate the evacuation capability through
22 timed exiting drills. Translation of timed fire exiting drills
23 to evacuation capability may be determined:

24 (I) Three minutes or less: prompt.

25 (II) More than 3 minutes, but not more than 13
26 minutes: slow.

27 (III) More than 13 minutes: impractical.

28 b. The Office of the State Fire Marshal shall provide
29 or cause the provision of training and education on the proper
30 application of Chapter 5, NFPA 101A, 1995 edition, to its
31 employees, to staff of the Agency for Health Care

1 Administration who are responsible for regulating facilities
2 under this part, and to local governmental inspectors. The
3 Office of the State Fire Marshal shall provide or cause the
4 provision of this training within its existing budget, but may
5 charge a fee for this training to offset its costs. The
6 initial training must be delivered within 6 months after July
7 1, 1995, and as needed thereafter.

8 c. The Office of the State Fire Marshal, in
9 cooperation with provider associations, shall provide or cause
10 the provision of a training program designed to inform
11 facility operators on how to properly review bid documents
12 relating to the installation of automatic fire sprinklers.
13 The Office of the State Fire Marshal shall provide or cause
14 the provision of this training within its existing budget, but
15 may charge a fee for this training to offset its costs. The
16 initial training must be delivered within 6 months after July
17 1, 1995, and as needed thereafter.

18 d. The administrator of a licensed facility shall sign
19 an affidavit verifying the number of residents occupying the
20 facility at the time of the evacuation capability evaluation.

21 2. Firesafety requirements.--

22 a. Except for the special applications provided
23 herein, effective January 1, 1996, the provisions of the
24 National Fire Protection Association, Life Safety Code, NFPA
25 101, 1994 edition, Chapter 22 for new facilities and Chapter
26 23 for existing facilities shall be the uniform fire code
27 applied by the State Fire Marshal for assisted living
28 facilities, pursuant to s. 633.022.

29 b. Any new facility, regardless of size, that applies
30 for a license on or after January 1, 1996, must be equipped
31 with an automatic fire sprinkler system. The exceptions as

1 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
2 adopted herein, apply to any new facility housing eight or
3 fewer residents. On July 1, 1995, local governmental entities
4 responsible for the issuance of permits for construction shall
5 inform, without liability, any facility whose permit for
6 construction is obtained prior to January 1, 1996, of this
7 automatic fire sprinkler requirement. As used in this part,
8 the term "a new facility" does not mean an existing facility
9 that has undergone change of ownership.

10 c. Notwithstanding any provision of s. 633.022 or of
11 the National Fire Protection Association, NFPA 101A, Chapter
12 5, 1995 edition, to the contrary, any existing facility
13 housing eight or fewer residents is not required to install an
14 automatic fire sprinkler system, nor to comply with any other
15 requirement in Chapter 23, NFPA 101, 1994 edition, that
16 exceeds the firesafety requirements of NFPA 101, 1988 edition,
17 that applies to this size facility, unless the facility has
18 been classified as impractical to evacuate. Any existing
19 facility housing eight or fewer residents that is classified
20 as impractical to evacuate must install an automatic fire
21 sprinkler system within the timeframes granted in this
22 section.

23 d. Any existing facility that is required to install
24 an automatic fire sprinkler system under this paragraph need
25 not meet other firesafety requirements of Chapter 23, NFPA
26 101, 1994 edition, which exceed the provisions of NFPA 101,
27 1988 edition. The mandate contained in this paragraph which
28 requires certain facilities to install an automatic fire
29 sprinkler system supersedes any other requirement.

30 e. This paragraph does not supersede the exceptions
31 granted in NFPA 101, 1988 edition or 1994 edition.

1 f. This paragraph does not exempt facilities from
2 other firesafety provisions adopted under s. 633.022 and local
3 building code requirements in effect before July 1, 1995.

4 g. A local government may charge fees only in an
5 amount not to exceed the actual expenses incurred by local
6 government relating to the installation and maintenance of an
7 automatic fire sprinkler system in an existing and properly
8 licensed assisted living facility structure as of January 1,
9 1996.

10 h. If a licensed facility undergoes major
11 reconstruction or addition to an existing building on or after
12 January 1, 1996, the entire building must be equipped with an
13 automatic fire sprinkler system. Major reconstruction of a
14 building means repair or restoration that costs in excess of
15 50 percent of the value of the building as reported on the tax
16 rolls, excluding land, before reconstruction. Multiple
17 reconstruction projects within a 5-year period the total costs
18 of which exceed 50 percent of the initial value of the
19 building at the time the first reconstruction project was
20 permitted are to be considered as major reconstruction.
21 Application for a permit for an automatic fire sprinkler
22 system is required upon application for a permit for a
23 reconstruction project that creates costs that go over the
24 50-percent threshold.

25 i. Any facility licensed before January 1, 1996, that
26 is required to install an automatic fire sprinkler system
27 shall ensure that the installation is completed within the
28 following timeframes based upon evacuation capability of the
29 facility as determined under subparagraph 1.:

30 (I) Impractical evacuation capability, 24 months.

31 (II) Slow evacuation capability, 48 months.

1 (III) Prompt evacuation capability, 60 months.
2
3 The beginning date from which the deadline for the automatic
4 fire sprinkler installation requirement must be calculated is
5 upon receipt of written notice from the local fire official
6 that an automatic fire sprinkler system must be installed. The
7 local fire official shall send a copy of the document
8 indicating the requirement of a fire sprinkler system to the
9 Agency for Health Care Administration.
10 j. It is recognized that the installation of an
11 automatic fire sprinkler system may create financial hardship
12 for some facilities. The appropriate local fire official
13 shall, without liability, grant two 1-year extensions to the
14 timeframes for installation established herein, if an
15 automatic fire sprinkler installation cost estimate and proof
16 of denial from two financial institutions for a construction
17 loan to install the automatic fire sprinkler system are
18 submitted. However, for any facility with a class I or class
19 II, or a history of uncorrected class III, firesafety
20 deficiencies, an extension must not be granted. The local
21 fire official shall send a copy of the document granting the
22 time extension to the Agency for Health Care Administration.
23 k. A facility owner whose facility is required to be
24 equipped with an automatic fire sprinkler system under Chapter
25 23, NFPA 101, 1994 edition, as adopted herein, must disclose
26 to any potential buyer of the facility that an installation of
27 an automatic fire sprinkler requirement exists. The sale of
28 the facility does not alter the timeframe for the installation
29 of the automatic fire sprinkler system.
30 l. Existing facilities required to install an
31 automatic fire sprinkler system as a result of

1 construction-type restrictions in Chapter 23, NFPA 101, 1994
2 edition, as adopted herein, or evacuation capability
3 requirements shall be notified by the local fire official in
4 writing of the automatic fire sprinkler requirement, as well
5 as the appropriate date for final compliance as provided in
6 this subparagraph. The local fire official shall send a copy
7 of the document to the Agency for Health Care Administration.

8 m. Except in cases of life-threatening fire hazards,
9 if an existing facility experiences a change in the evacuation
10 capability, or if the local authority having jurisdiction
11 identifies a construction-type restriction, such that an
12 automatic fire sprinkler system is required, it shall be
13 afforded time for installation as provided in this
14 subparagraph.

15
16 Facilities that are fully sprinkled and in compliance with
17 other firesafety standards are not required to conduct more
18 than one of the required fire drills between the hours of 11
19 p.m. and 7 a.m., per year. In lieu of the remaining drills,
20 staff responsible for residents during such hours may be
21 required to participate in a mock drill that includes a review
22 of evacuation procedures. Such standards must be included or
23 referenced in the rules adopted by the State Fire Marshal.
24 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
25 final administrative authority for firesafety standards
26 established and enforced pursuant to this section. All
27 licensed facilities must have an annual fire inspection
28 conducted by the local fire marshal or authority having
29 jurisdiction.

30 (b) The preparation and annual update of a
31 comprehensive emergency management plan. Such standards must

1 be included in the rules adopted by the agency ~~department~~
2 after consultation with the Department of Community Affairs.
3 At a minimum, the rules must provide for plan components that
4 address emergency evacuation transportation; adequate
5 sheltering arrangements; postdisaster activities, including
6 provision of emergency power, food, and water; postdisaster
7 transportation; supplies; staffing; emergency equipment;
8 individual identification of residents and transfer of
9 records; communication with families; and responses to family
10 inquiries. The comprehensive emergency management plan is
11 subject to review and approval by the local emergency
12 management agency. During its review, the local emergency
13 management agency shall ensure that the following agencies, at
14 a minimum, are given the opportunity to review the plan: the
15 Department of Elderly Affairs, the Department of Health, the
16 Agency for Health Care Administration, and the Department of
17 Community Affairs. Also, appropriate volunteer organizations
18 must be given the opportunity to review the plan. The local
19 emergency management agency shall complete its review within
20 60 days and either approve the plan or advise the facility of
21 necessary revisions.

22 (c) The number, training, and qualifications of all
23 personnel having responsibility for the care of residents.
24 The rules must require adequate staff to provide for the
25 safety of all residents. Facilities licensed for 17 or more
26 residents are required to maintain an alert staff for 24 hours
27 per day.

28 (d) All sanitary conditions within the facility and
29 its surroundings which will ensure the health and comfort of
30 residents. The rules must clearly delineate the
31 responsibilities of the agency's licensure and survey staff,

1 the county health departments, and the local authority having
2 jurisdiction over fire safety and ensure that inspections are
3 not duplicative. The agency may collect fees for food service
4 inspections conducted by the county health departments and
5 transfer such fees to the Department of Health.

6 ~~(e) License application and license renewal, transfer~~
7 ~~of ownership,~~ Proper management of resident funds and personal
8 property, surety bonds, resident contracts, refund policies,
9 ~~financial ability to operate,~~ and facility and staff records.

10 (f) Inspections, complaint investigations,
11 ~~moratoriums,~~ classification of deficiencies, levying and
12 enforcement of penalties, and use of income from fees and
13 fines.

14 (g) The enforcement of the resident bill of rights
15 specified in s. 400.428.

16 (h) The care and maintenance of residents, which must
17 include, but is not limited to:

- 18 1. The supervision of residents;
- 19 2. The provision of personal services;
- 20 3. The provision of, or arrangement for, social and
21 leisure activities;
- 22 4. The arrangement for appointments and transportation
23 to appropriate medical, dental, nursing, or mental health
24 services, as needed by residents;
- 25 5. The management of medication;
- 26 6. The nutritional needs of residents;
- 27 7. Resident records; and
- 28 8. Internal risk management and quality assurance.

29 (i) Facilities holding a limited nursing, extended
30 congregate care, or limited mental health license.

31

1 (j) The establishment of specific criteria to define
2 appropriateness of resident admission and continued residency
3 in a facility holding a standard, limited nursing, extended
4 congregate care, and limited mental health license.

5 (k) The use of physical or chemical restraints. The
6 use of physical restraints is limited to half-bed rails as
7 prescribed and documented by the resident's physician with the
8 consent of the resident or, if applicable, the resident's
9 representative or designee or the resident's surrogate,
10 guardian, or attorney in fact. The use of chemical restraints
11 is limited to prescribed dosages of medications authorized by
12 the resident's physician and must be consistent with the
13 resident's diagnosis. Residents who are receiving medications
14 that can serve as chemical restraints must be evaluated by
15 their physician at least annually to assess:

- 16 1. The continued need for the medication.
- 17 2. The level of the medication in the resident's
18 blood.
- 19 3. The need for adjustments in the prescription.

20 (2) In adopting any rules pursuant to this part, the
21 agency ~~department~~, in conjunction with the department ~~agency~~,
22 shall make distinct standards for facilities based upon
23 facility size; the types of care provided; the physical and
24 mental capabilities and needs of residents; the type,
25 frequency, and amount of services and care offered; and the
26 staffing characteristics of the facility. Rules developed
27 pursuant to this section shall not restrict the use of shared
28 staffing and shared programming in facilities that are part of
29 retirement communities that provide multiple levels of care
30 and otherwise meet the requirements of law and rule. Except
31 for uniform firesafety standards, the agency ~~department~~ shall

1 adopt by rule separate and distinct standards for facilities
2 with 16 or fewer beds and for facilities with 17 or more beds.
3 The standards for facilities with 16 or fewer beds shall be
4 appropriate for a noninstitutional residential environment,
5 provided that the structure is no more than two stories in
6 height and all persons who cannot exit the facility unassisted
7 in an emergency reside on the first floor. The agency
8 ~~department~~, in conjunction with the department ~~agency~~, may
9 make other distinctions among types of facilities as necessary
10 to enforce the provisions of this part. Where appropriate, the
11 agency shall offer alternate solutions for complying with
12 established standards, based on distinctions made by the
13 department and the agency relative to the physical
14 characteristics of facilities and the types of care offered
15 therein.

16 (3) ~~The department shall submit a copy of proposed~~
17 ~~rules to the Speaker of the House of Representatives, the~~
18 ~~President of the Senate, and appropriate committees of~~
19 ~~substance for review and comment prior to the promulgation~~
20 ~~thereof.~~

21 (a) Rules adopted ~~promulgated~~ by the agency ~~department~~
22 shall encourage the development of homelike facilities which
23 promote the dignity, individuality, personal strengths, and
24 decisionmaking ability of residents.

25 (b) The agency, in consultation with the department,
26 may waive rules promulgated pursuant to this part in order to
27 demonstrate and evaluate innovative or cost-effective
28 congregate care alternatives which enable individuals to age
29 in place. Such waivers may be granted only in instances where
30 there is reasonable assurance that the health, safety, or
31 welfare of residents will not be endangered. To apply for a

1 waiver, the licensee shall submit to the agency a written
2 description of the concept to be demonstrated, including
3 goals, objectives, and anticipated benefits; the number and
4 types of residents who will be affected, if applicable; a
5 brief description of how the demonstration will be evaluated;
6 and any other information deemed appropriate by the agency.
7 Any facility granted a waiver shall submit a report of
8 findings to the agency and the department within 12 months.
9 At such time, the agency may renew or revoke the waiver or
10 pursue any regulatory or statutory changes necessary to allow
11 other facilities to adopt the same practices. The agency
12 ~~department~~ may by rule clarify terms and establish waiver
13 application procedures, criteria for reviewing waiver
14 proposals, and procedures for reporting findings, as necessary
15 to implement this subsection.

16 (4) The agency may use an abbreviated biennial
17 standard licensure inspection that consists of a review of key
18 quality-of-care standards in lieu of a full inspection in
19 facilities which have a good record of past performance.
20 However, a full inspection shall be conducted in facilities
21 which have had a history of class I or class II violations,
22 uncorrected class III violations, confirmed ombudsman council
23 complaints, or confirmed licensure complaints, within the
24 previous licensure period immediately preceding the inspection
25 or when a potentially serious problem is identified during the
26 abbreviated inspection. The agency, in consultation with the
27 department, shall develop the key quality-of-care standards
28 with input from the State Long-Term Care Ombudsman Council and
29 representatives of provider groups for incorporation into its
30 rules. The agency ~~department~~, in consultation with the
31 department ~~agency~~, shall report annually to the Legislature

1 concerning its implementation of this subsection. The report
2 shall include, at a minimum, the key quality-of-care standards
3 which have been developed; the number of facilities identified
4 as being eligible for the abbreviated inspection; the number
5 of facilities which have received the abbreviated inspection
6 and, of those, the number that were converted to full
7 inspection; the number and type of subsequent complaints
8 received by the agency or department on facilities which have
9 had abbreviated inspections; any recommendations for
10 modification to this subsection; any plans by the agency to
11 modify its implementation of this subsection; and any other
12 information which the agency ~~department~~ believes should be
13 reported.

14 ~~(5) A fee shall be charged by the department to any~~
15 ~~person requesting a copy of this part or rules promulgated~~
16 ~~under this part. Such fees shall not exceed the actual cost~~
17 ~~of duplication and postage.~~

18 Section 95. Subsection (4) of section 400.442, Florida
19 Statutes, is amended to read:

20 400.442 Pharmacy and dietary services.--

21 (4) The agency ~~department~~ may by rule establish
22 procedures and specify documentation as necessary to implement
23 this section.

24 Section 96. Subsection (3) of section 400.444, Florida
25 Statutes, is amended to read:

26 400.444 Construction and renovation; requirements.--

27 (3) The agency ~~department~~ may adopt rules to establish
28 procedures and specify the documentation necessary to
29 implement this section.

30 Section 97. Subsections (1), (2), and (3) of section
31 400.447 and section 400.451, Florida Statutes, are repealed.

1 Section 98. Subsections (1), (3), and (6) of section
2 400.452, Florida Statutes, as amended by section 3 of chapter
3 2003-405, Laws of Florida, are amended to read:

4 400.452 Staff training and educational programs; core
5 educational requirement.--

6 (1) Administrators and other assisted living facility
7 staff must meet minimum training and education requirements
8 established by the Department of Elderly Affairs or the agency
9 by rule. This training and education is intended to assist
10 facilities to appropriately respond to the needs of residents,
11 to maintain resident care and facility standards, and to meet
12 licensure requirements.

13 (3) Effective January 1, 2004, a new facility
14 administrator must complete the required training and
15 education, including the competency test, within a reasonable
16 time after being employed as an administrator, as determined
17 by the department. Failure to do so is a violation of this
18 part and subjects the violator to an administrative fine as
19 prescribed in s. 400.419. Administrators licensed in
20 accordance with chapter 468, part II, are exempt from this
21 requirement. Other licensed professionals may be exempted, as
22 determined ~~by the department~~ by rule.

23 (6) Other facility staff shall participate in training
24 relevant to their job duties as specified by rule ~~of the~~
25 ~~department~~.

26 Section 99. Section 400.454, Florida Statutes, is
27 amended to read:

28 400.454 Collection of information; local subsidy.--

29 (1) To enable the agency ~~department~~ to collect the
30 information requested by the Legislature regarding the actual
31 cost of providing room, board, and personal care in

1 facilities, the agency may ~~department is authorized to~~ conduct
2 field visits and audits of facilities as may be necessary.
3 The owners of randomly sampled facilities shall submit such
4 reports, audits, and accountings of cost as required ~~the~~
5 ~~department may require~~ by rule; provided that such reports,
6 audits, and accountings shall be the minimum necessary to
7 implement the provisions of this section. Any facility
8 selected to participate in the study shall cooperate with the
9 agency ~~department~~ by providing cost of operation information
10 to interviewers.

11 (2) Local governments or organizations may contribute
12 to the cost of care of local facility residents by further
13 subsidizing the rate of state-authorized payment to such
14 facilities. Implementation of local subsidy shall require
15 agency ~~departmental~~ approval and shall not result in
16 reductions in the state supplement.

17 Section 100. Subsections (1) and (4) of section
18 400.464, Florida Statutes, are amended to read:

19 400.464 Home health agencies to be licensed;
20 expiration of license; exemptions; unlawful acts; penalties.--

21 (1) The requirements of part II of chapter 408 apply
22 to the provision of services that necessitate licensure
23 pursuant to this part and part II of chapter 408 and to
24 entities licensed or registered by or applying for such
25 licensure or registration from the Agency for Health Care
26 Administration pursuant to this part. However, an applicant
27 for licensure is exempt from the provisions of s. 408.810(10).
28 ~~Any home health agency must be licensed by the agency to~~
29 ~~operate in this state. A license issued to a home health~~
30 ~~agency, unless sooner suspended or revoked, expires 1 year~~
31 ~~after its date of issuance.~~

1 (4)(a) ~~An organization may not provide, offer, or~~
2 ~~advertise home health services to the public unless the~~
3 ~~organization has a valid license or is specifically exempted~~
4 ~~under this part.~~An organization that offers or advertises to
5 the public any service for which licensure or registration is
6 required under this part must include in the advertisement the
7 license number or regulation number issued to the organization
8 by the agency. The agency shall assess a fine of not less
9 than \$100 to any licensee or registrant who fails to include
10 the license or registration number when submitting the
11 advertisement for publication, broadcast, or printing. The
12 holder of a license issued under this part may not advertise
13 or indicate to the public that it holds a home health agency
14 or nurse registry license other than the one it has been
15 issued.

16 (b) A person who violates paragraph (a) is subject to
17 an injunctive proceeding under s. 408.816 ~~s. 400.515~~. A
18 violation of paragraph (a) or s. 408.812 is a deceptive and
19 unfair trade practice and constitutes a violation of the
20 Florida Deceptive and Unfair Trade Practices Act.

21 ~~(c) A person who violates the provisions of paragraph~~
22 ~~(a) commits a misdemeanor of the second degree, punishable as~~
23 ~~provided in s. 775.082 or s. 775.083. Any person who commits~~
24 ~~a second or subsequent violation commits a misdemeanor of the~~
25 ~~first degree, punishable as provided in s. 775.082 or s.~~
26 ~~775.083. Each day of continuing violation constitutes a~~
27 ~~separate offense.~~

28 Section 101. Section 400.471, Florida Statutes, is
29 amended to read:

30 400.471 Application for license; fee; provisional
31 license; temporary permit.--

1 (1) Each applicant for licensure must comply with all
2 provisions of part II of chapter 408.~~Application for an~~
3 ~~initial license or for renewal of an existing license must be~~
4 ~~made under oath to the agency on forms furnished by it and~~
5 ~~must be accompanied by the appropriate license fee as provided~~
6 ~~in subsection (8). The agency must take final action on an~~
7 ~~initial licensure application within 60 days after receipt of~~
8 ~~all required documentation.~~

9 (2) In addition to the requirements of part II of
10 chapter 408,the applicant must file with the application
11 satisfactory proof that the home health agency is in
12 compliance with this part and applicable rules, including:

13 (a) A listing of services to be provided, either
14 directly by the applicant or through contractual arrangements
15 with existing providers; and

16 (b) The number and discipline of professional staff to
17 be employed.~~an annually thereafter~~

18 ~~(c) Proof of financial ability to operate.~~

19 ~~(3) An applicant for initial licensure must~~
20 ~~demonstrate financial ability to operate by submitting a~~
21 ~~balance sheet and income and expense statement for the first 2~~
22 ~~years of operation which provide evidence of having sufficient~~
23 ~~assets, credit, and projected revenues to cover liabilities~~
24 ~~and expenses. The applicant shall have demonstrated financial~~
25 ~~ability to operate if the applicant's assets, credit, and~~
26 ~~projected revenues meet or exceed projected liabilities and~~
27 ~~expenses. All documents required under this subsection must~~
28 ~~be prepared in accordance with generally accepted accounting~~
29 ~~principles, and the financial statement must be signed by a~~
30 ~~certified public accountant.~~

31

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

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

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

19 ~~(c) Proof of compliance with the level 2 background~~
20 ~~screening requirements of chapter 435 which has been submitted~~
21 ~~within the previous 5 years in compliance with any other~~
22 ~~health care or assisted living licensure requirements of this~~
23 ~~state is acceptable in fulfillment of paragraph (a). Proof of~~
24 ~~compliance with background screening which has been submitted~~
25 ~~within the previous 5 years to fulfill the requirements of the~~
26 ~~Financial Services Commission and the Office of Insurance~~
27 ~~Regulation pursuant to chapter 651 as part of an application~~
28 ~~for a certificate of authority to operate a continuing care~~
29 ~~retirement community is acceptable in fulfillment of the~~
30 ~~Department of Law Enforcement and Federal Bureau of~~
31 ~~Investigation background check.~~

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

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

28 ~~(f) Each applicant must submit to the agency a~~
29 ~~description and explanation of any conviction of an offense~~
30 ~~prohibited under the level 2 standards of chapter 435 by a~~
31 ~~member of the board of directors of the applicant, its~~

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

15 ~~(g) A license may not be granted to an applicant if~~
16 ~~the applicant, administrator, or financial officer has been~~
17 ~~found guilty of, regardless of adjudication, or has entered a~~
18 ~~plea of nolo contendere or guilty to, any offense prohibited~~
19 ~~under the level 2 standards for screening set forth in chapter~~
20 ~~435, unless an exemption from disqualification has been~~
21 ~~granted by the agency as set forth in chapter 435.~~

22 ~~(h) The agency may deny or revoke licensure if the~~
23 ~~applicant:~~

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

28 ~~2. Has been or is currently excluded, suspended,~~
29 ~~terminated from, or has involuntarily withdrawn from~~
30 ~~participation in this state's Medicaid program, or the~~
31 ~~Medicaid program of any other state, or from participation in~~

1 ~~the Medicare program or any other governmental or private~~
2 ~~health care or health insurance program.~~

3 ~~(i) An application for license renewal must contain~~
4 ~~the information required under paragraphs (e) and (f).~~

5 (3)(5) In addition to the requirements of s. 408.810,
6 the home health agency must also obtain and maintain the
7 following insurance coverages in an amount of not less than
8 \$250,000 per claim, and the home health agency must submit
9 proof of coverage with an initial application for licensure
10 and with each ~~annual~~ application for license renewal:

11 (a) Malpractice insurance as defined in s.
12 624.605(1)(k); and

13 (b) Liability insurance as defined in s.
14 624.605(1)(b).

15 ~~(6) Ninety days before the expiration date, an~~
16 ~~application for renewal must be submitted to the agency under~~
17 ~~oath on forms furnished by it, and a license must be renewed~~
18 ~~if the applicant has met the requirements established under~~
19 ~~this part and applicable rules. The home health agency must~~
20 ~~file with the application satisfactory proof that it is in~~
21 ~~compliance with this part and applicable rules. If there is~~
22 ~~evidence of financial instability, the home health agency must~~
23 ~~submit satisfactory proof of its financial ability to comply~~
24 ~~with the requirements of this part.~~

25 ~~(7) When transferring the ownership of a home health~~
26 ~~agency, the transferee must submit an application for a~~
27 ~~license at least 60 days before the effective date of the~~
28 ~~transfer. If the home health agency is being leased, a copy~~
29 ~~of the lease agreement must be filed with the application.~~

30 (4)(8) In accordance with s. 408.805, an applicant or
31 licensee shall pay a fee for each license application

1 submitted under this part and part II of chapter 408. The fee
2 shall be established by rule and shall be set at ~~The license~~
3 ~~fee and annual renewal fee required of a home health agency~~
4 ~~are nonrefundable. The agency shall set the fees in an amount~~
5 that is sufficient to cover the agency's ~~its~~ costs in carrying
6 out its responsibilities under this part, but may ~~to~~
7 exceed \$2,000 per biennium ~~\$1,000~~. However, state, county, or
8 municipal governments applying for licenses under this part
9 are exempt from the payment of license fees. ~~All fees~~
10 ~~collected under this part must be deposited in the Health Care~~
11 ~~Trust Fund for the administration of this part.~~

12 ~~(9) The license must be displayed in a conspicuous~~
13 ~~place in the administrative office of the home health agency~~
14 ~~and is valid only while in the possession of the person to~~
15 ~~which it is issued. The license may not be sold, assigned, or~~
16 ~~otherwise transferred, voluntarily or involuntarily, and is~~
17 ~~valid only for the home health agency and location for which~~
18 ~~originally issued.~~

19 ~~(10) A home health agency against whom a revocation or~~
20 ~~suspension proceeding is pending at the time of license~~
21 ~~renewal may be issued a provisional license effective until~~
22 ~~final disposition by the agency of such proceedings. If~~
23 ~~judicial relief is sought from the final disposition, the~~
24 ~~court that has jurisdiction may issue a temporary permit for~~
25 ~~the duration of the judicial proceeding.~~

26 (5) ~~(11)~~ The agency may not issue a license designated
27 as certified to a home health agency that fails to satisfy the
28 requirements of a Medicare certification survey from the
29 agency.

30
31

1 ~~(12) The agency may not issue a license to a home~~
2 ~~health agency that has any unpaid fines assessed under this~~
3 ~~part.~~

4 Section 102. Section 400.474, Florida Statutes, is
5 amended to read:

6 400.474 Denial or, ~~suspension~~, revocation of license;
7 injunction; grounds; penalties.--

8 (1) The agency may deny or, ~~revoke~~, ~~or suspend~~ a
9 license, ~~or~~ impose an administrative fine in the manner
10 provided in chapter 120, or initiate injunctive proceedings
11 under s. 408.816 for the violation of any provision of this
12 part, part II of chapter 408, or applicable rules s. 400.515.

13 (2) Any of the following actions by a home health
14 agency or its employee is grounds for disciplinary action by
15 the agency:

16 (a) Violation of this part, part II of chapter 408, or
17 of applicable rules.

18 (b) An intentional, reckless, or negligent act that
19 materially affects the health or safety of a patient.

20 (c) Knowingly providing home health services in an
21 unlicensed assisted living facility or unlicensed adult
22 family-care home, unless the home health agency or employee
23 reports the unlicensed facility or home to the agency within
24 72 hours after providing the services.

25 ~~(3) The agency may impose the following penalties for~~
26 ~~operating without a license upon an applicant or owner who has~~
27 ~~in the past operated, or who currently operates, a licensed~~
28 ~~home health agency.~~

29 ~~(a) If a home health agency that is found to be~~
30 ~~operating without a license wishes to apply for a license, the~~
31 ~~home health agency may submit an application only after the~~

1 ~~agency has verified that the home health agency no longer~~
2 ~~operates an unlicensed home health agency.~~

3 ~~(b) Any person, partnership, or corporation that~~
4 ~~violates paragraph (a) and that previously operated a licensed~~
5 ~~home health agency or concurrently operates both a licensed~~
6 ~~home health agency and an unlicensed home health agency~~
7 ~~commits a felony of the third degree punishable as provided in~~
8 ~~s. 775.082, s. 775.083, or s. 775.084. If an owner has an~~
9 ~~interest in more than one home health agency and fails to~~
10 ~~license any one of those home health agencies, the agency must~~
11 ~~issue a cease and desist order for the activities of the~~
12 ~~unlicensed home health agency and impose a moratorium on any~~
13 ~~or all of the licensed related home health agencies until the~~
14 ~~unlicensed home health agency is licensed.~~

15 ~~(3)(c) If any home health agency is found to be~~
16 ~~operating without a license meets the criteria in paragraph~~
17 ~~(a) or paragraph (b) and that home health agency has received~~
18 ~~any government reimbursement for services provided by an~~
19 ~~unlicensed home health agency, the agency shall make a fraud~~
20 ~~referral to the appropriate government reimbursement program.~~

21 ~~(4) The agency may deny, revoke, or suspend the~~
22 ~~license of a home health agency, or may impose on a home~~
23 ~~health agency administrative fines not to exceed the aggregate~~
24 ~~sum of \$5,000 if:~~

25 ~~(a) The agency is unable to obtain entry to the home~~
26 ~~health agency to conduct a licensure survey, complaint~~
27 ~~investigation, surveillance visit, or monitoring visit.~~

28 ~~(b) An applicant or a licensed home health agency has~~
29 ~~falsely represented a material fact in the application, or has~~
30 ~~omitted from the application any material fact, including, but~~
31 ~~not limited to, the fact that the controlling or ownership~~

1 ~~interest is held by any officer, director, agent, manager,~~
2 ~~employee, affiliated person, partner, or shareholder who is~~
3 ~~not eligible to participate.~~

4 ~~(c) An applicant, owner, or person who has a 5 percent~~
5 ~~or greater interest in a licensed entity:~~

6 ~~1. Has been previously found by any licensing,~~
7 ~~certifying, or professional standards board or agency to have~~
8 ~~violated the standards or conditions that relate to home~~
9 ~~health-related licensure or certification, or to the quality~~
10 ~~of home health-related services provided; or~~

11 ~~2. Has been or is currently excluded, suspended,~~
12 ~~terminated from, or has involuntarily withdrawn from,~~
13 ~~participation in the Medicaid program of this state or any~~
14 ~~other state, the Medicare program, or any other governmental~~
15 ~~health care or health insurance program.~~

16 Section 103. Subsection (1) and paragraphs (a) and (b)
17 of subsection (2) of section 400.484, Florida Statutes, are
18 amended to read:

19 400.484 Right of inspection; deficiencies; fines.--

20 (1) In accordance with s. 408.811, ~~Any duly authorized~~
21 ~~officer or employee of the agency may make such inspections~~
22 ~~and investigations as are necessary in order to determine the~~
23 ~~state of compliance with this part and with applicable rules.~~
24 ~~The right of inspection extends to any business that the~~
25 ~~agency has reason to believe is being operated as a home~~
26 ~~health agency without a license, but such inspection of any~~
27 ~~such business may not be made without the permission of the~~
28 ~~owner or person in charge unless a warrant is first obtained~~
29 ~~from a circuit court. Any application for a license issued~~
30 ~~under this part or for license renewal constitutes permission~~

31

1 ~~for an appropriate inspection to verify the information~~
2 ~~submitted on or in connection with the application.~~

3 (2) The agency shall impose fines for various classes
4 of deficiencies in accordance with the following schedule:

5 (a) A class I deficiency is any act, omission, or
6 practice that results in a patient's death, disablement, or
7 permanent injury, or places a patient at imminent risk of
8 death, disablement, or permanent injury. Upon finding a class
9 I deficiency, the agency may impose an administrative fine in
10 the amount of \$5,000 for each occurrence and each day that the
11 deficiency exists. In addition, the agency may immediately
12 revoke the license, or impose a moratorium pursuant to s.
13 408.814 ~~on the admission of new patients~~, until the factors
14 causing the deficiency have been corrected.

15 (b) A class II deficiency is any act, omission, or
16 practice that has a direct adverse effect on the health,
17 safety, or security of a patient. Upon finding a class II
18 deficiency, the agency may impose an administrative fine in
19 the amount of \$1,000 for each occurrence and each day that the
20 deficiency exists. In addition, the agency may suspend the
21 license, or impose a moratorium pursuant to s. 408.814 ~~on the~~
22 ~~admission of new patients~~, until the deficiency has been
23 corrected.

24 Section 104. Section 400.494, Florida Statutes, is
25 amended to read:

26 400.494 Information about patients confidential.--

27 (1) Information about patients received by persons
28 employed by, or providing services to, a home health agency or
29 received by the licensing agency through reports or inspection
30 shall be confidential and exempt from the provisions of s.
31 119.07(1) and may ~~shall~~ not be disclosed to any person other

1 than the patient without the written consent of that patient
2 or the patient's guardian.

3 (2) This section does not apply to information
4 lawfully requested by the Medicaid Fraud Control Unit of the
5 Office of the Attorney General or requested under s. 408.811
6 ~~Department of Legal Affairs.~~

7 Section 105. Section 400.495, Florida Statutes, is
8 amended to read:

9 400.495 Notice of toll-free telephone number for
10 central abuse hotline.--In addition to the requirements of s.
11 408.810(5),~~On or before the first day home health services~~
12 ~~are provided to a patient, any home health agency or nurse~~
13 ~~registry licensed under this part must inform the patient and~~
14 ~~his or her immediate family, if appropriate, of the right to~~
15 ~~report abusive, neglectful, or exploitative practices. The~~
16 ~~statewide toll-free telephone number for the central abuse~~
17 ~~hotline must be provided to patients in a manner that is~~
18 ~~clearly legible and must include the words: "To report abuse,~~
19 ~~neglect, or exploitation, please call toll-free ... (phone~~
20 ~~number)...."~~the Agency for Health Care Administration shall
21 adopt rules that provide for 90 days' advance notice of a
22 change in the toll-free telephone number and that outline due
23 process procedures, as provided under chapter 120, for home
24 health agency personnel and nurse registry personnel who are
25 reported to the central abuse hotline. Home health agencies
26 and nurse registries shall establish appropriate policies and
27 procedures for providing such notice to patients.

28 Section 106. Section 400.497, Florida Statutes, is
29 amended to read:

30 400.497 Rules establishing minimum standards.--The
31 agency shall adopt, publish, and enforce rules to implement

1 part II of chapter 408, this part, including, as applicable,
2 ss. 400.506 and 400.509, which must provide reasonable and
3 fair minimum standards relating to:

4 (1) The home health aide competency test and home
5 health aide training. The agency shall create the home health
6 aide competency test and establish the curriculum and
7 instructor qualifications for home health aide training.
8 Licensed home health agencies may provide this training and
9 shall furnish documentation of such training to other licensed
10 home health agencies upon request. Successful passage of the
11 competency test by home health aides may be substituted for
12 the training required under this section and any rule adopted
13 pursuant thereto.

14 (2) Shared staffing. The agency shall allow shared
15 staffing if the home health agency is part of a retirement
16 community that provides multiple levels of care, is located on
17 one campus, is licensed under this chapter, and otherwise
18 meets the requirements of law and rule.

19 (3) The criteria for the frequency of onsite licensure
20 surveys.

21 (4) Licensure application and renewal.

22 (5) The requirements for onsite and electronic
23 accessibility of supervisory personnel of home health
24 agencies.

25 (6) Information to be included in patients' records.

26 (7) Geographic service areas.

27 (8) Preparation of a comprehensive emergency
28 management plan pursuant to s. 400.492.

29 (a) The Agency for Health Care Administration shall
30 adopt rules establishing minimum criteria for the plan and
31

1 plan updates, with the concurrence of the Department of Health
2 and in consultation with the Department of Community Affairs.

3 (b) The rules must address the requirements in s.
4 400.492. In addition, the rules shall provide for the
5 maintenance of patient-specific medication lists that can
6 accompany patients who are transported from their homes.

7 (c) The plan is subject to review and approval by the
8 county health department. During its review, the county health
9 department shall ensure that the following agencies, at a
10 minimum, are given the opportunity to review the plan:

- 11 1. The local emergency management agency.
- 12 2. The Agency for Health Care Administration.
- 13 3. The local chapter of the American Red Cross or
14 other lead sheltering agency.
- 15 4. The district office of the Department of Children
16 and Family Services.

17
18 The county health department shall complete its review within
19 60 days after receipt of the plan and shall either approve the
20 plan or advise the home health agency of necessary revisions.

21 (d) For any home health agency that operates in more
22 than one county, the Department of Health shall review the
23 plan, after consulting with all of the county health
24 departments, the agency, and all the local chapters of the
25 American Red Cross or other lead sheltering agencies in the
26 areas of operation for that particular home health agency. The
27 Department of Health shall complete its review within 90 days
28 after receipt of the plan and shall either approve the plan or
29 advise the home health agency of necessary revisions. The
30 Department of Health shall make every effort to avoid imposing
31

1 differing requirements based on differences between counties
2 on the home health agency.

3 (e) The requirements in this subsection do not apply
4 to:

5 1. A facility that is certified under chapter 651 and
6 has a licensed home health agency used exclusively by
7 residents of the facility; or

8 2. A retirement community that consists of residential
9 units for independent living and either a licensed nursing
10 home or an assisted living facility, and has a licensed home
11 health agency used exclusively by the residents of the
12 retirement community, provided the comprehensive emergency
13 management plan for the facility or retirement community
14 provides for continuous care of all residents with special
15 needs during an emergency.

16 Section 107. Section 400.506, Florida Statutes, is
17 amended to read:

18 400.506 Licensure of nurse registries; requirements;
19 penalties.--

20 (1) A nurse registry is exempt from the licensing
21 requirements of a home health agency but must be licensed as a
22 nurse registry. The requirements of part II of chapter 408
23 apply to the provision of services that necessitate licensure
24 pursuant to 400.506-400.518 and part II of chapter 408 and to
25 entities licensed by or applying for such licensed from the
26 Agency for Health Care Administration pursuant to ss.
27 400.506-400.518.Each operational site of the nurse registry
28 must be licensed, unless there is more than one site within a
29 county. If there is more than one site within a county, only
30 one license per county is required. Each operational site
31 must be listed on the license.

1 (2) Each applicant for licensure must comply with all
2 provisions of part II of chapter 408, with the exception of s.
3 408.810(6) and (10).~~the following requirements:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~(3) In accordance with s. 408.805, an applicant or~~
28 ~~licensee shall pay a fee for each license application~~
29 ~~submitted under ss. 400.508-400.518 and part II of chapter~~
30 ~~408. The amount of the fee shall be established by rule and~~
31 ~~may not exceed \$2,000 per biennium.Application for license~~

1 ~~must be made to the Agency for Health Care Administration on~~
2 ~~forms furnished by it and must be accompanied by the~~
3 ~~appropriate licensure fee, as established by rule and not to~~
4 ~~exceed the cost of regulation under this part. The licensure~~
5 ~~fee for nurse registries may not exceed \$1,000 and must be~~
6 ~~deposited in the Health Care Trust Fund.~~

7 ~~(4) The Agency for Health Care Administration may~~
8 ~~deny, revoke, or suspend a license or impose an administrative~~
9 ~~fine in the manner provided in chapter 120 against a nurse~~
10 ~~registry that:~~

11 ~~(a) Fails to comply with this section or applicable~~
12 ~~rules.~~

13 ~~(b) Commits an intentional, reckless, or negligent act~~
14 ~~that materially affects the health or safety of a person~~
15 ~~receiving services.~~

16 ~~(5) A license issued for the operation of a nurse~~
17 ~~registry, unless sooner suspended or revoked, expires 1 year~~
18 ~~after its date of issuance. Sixty days before the expiration~~
19 ~~date, an application for renewal must be submitted to the~~
20 ~~Agency for Health Care Administration on forms furnished by~~
21 ~~it. The Agency for Health Care Administration shall renew the~~
22 ~~license if the applicant has met the requirements of this~~
23 ~~section and applicable rules. A nurse registry against which~~
24 ~~a revocation or suspension proceeding is pending at the time~~
25 ~~of license renewal may be issued a conditional license~~
26 ~~effective until final disposition by the Agency for Health~~
27 ~~Care Administration of such proceedings. If judicial relief is~~
28 ~~sought from the final disposition, the court having~~
29 ~~jurisdiction may issue a conditional license for the duration~~
30 ~~of the judicial proceeding.~~

31

1 ~~(6) The Agency for Health Care Administration may~~
2 ~~institute injunctive proceedings under s. 400.515.~~

3 (4)~~(7)~~ A person that offers or advertises to the
4 public that it provides any service for which licensure is
5 required under this section must include in such advertisement
6 the license number issued to it by the Agency for Health Care
7 Administration.

8 ~~(8) It is unlawful for a person to offer or advertise~~
9 ~~to the public services as defined by rule without obtaining a~~
10 ~~valid license from the Agency for Health Care Administration.~~
11 ~~It is unlawful for any holder of a license to advertise or~~
12 ~~hold out to the public that he or she holds a license for~~
13 ~~other than that for which he or she actually holds a license.~~
14 ~~A person who violates this subsection is subject to injunctive~~
15 ~~proceedings under s. 400.515.~~

16 ~~(9) Any duly authorized officer or employee of the~~
17 ~~Agency for Health Care Administration may make such~~
18 ~~inspections and investigations as are necessary to respond to~~
19 ~~complaints or to determine the state of compliance with this~~
20 ~~section and applicable rules.~~

21 ~~(a) If, in responding to a complaint, an agent or~~
22 ~~employee of the Agency for Health Care Administration has~~
23 ~~reason to believe that a crime has been committed, he or she~~
24 ~~shall notify the appropriate law enforcement agency.~~

25 ~~(b) If, in responding to a complaint, an agent or~~
26 ~~employee of the Agency for Health Care Administration has~~
27 ~~reason to believe that abuse, neglect, or exploitation has~~
28 ~~occurred, according to the definitions in chapter 415, he or~~
29 ~~she shall file a report under chapter 415.~~

30 (5)~~(10)~~(a) A nurse registry may refer for contract in
31 private residences registered nurses and licensed practical

1 nurses registered and licensed under part I of chapter 464,
2 certified nursing assistants certified under part II of
3 chapter 464, home health aides who present documented proof of
4 successful completion of the training required by rule of the
5 agency, and companions or homemakers for the purposes of
6 providing those services authorized under s. 400.509(1). Each
7 person referred by a nurse registry must provide current
8 documentation that he or she is free from communicable
9 diseases.

10 (b) A certified nursing assistant or home health aide
11 may be referred for a contract to provide care to a patient in
12 his or her home only if that patient is under a physician's
13 care. A certified nursing assistant or home health aide
14 referred for contract in a private residence shall be limited
15 to assisting a patient with bathing, dressing, toileting,
16 grooming, eating, physical transfer, and those normal daily
17 routines the patient could perform for himself or herself were
18 he or she physically capable. A certified nursing assistant
19 or home health aide may not provide medical or other health
20 care services that require specialized training and that may
21 be performed only by licensed health care professionals. The
22 nurse registry shall obtain the name and address of the
23 attending physician and send written notification to the
24 physician within 48 hours after a contract is concluded that a
25 certified nursing assistant or home health aide will be
26 providing care for that patient.

27 (c) A registered nurse shall make monthly visits to
28 the patient's home to assess the patient's condition and
29 quality of care being provided by the certified nursing
30 assistant or home health aide. Any condition which in the
31 professional judgment of the nurse requires further medical

1 attention shall be reported to the attending physician and the
2 nurse registry. The assessment shall become a part of the
3 patient's file with the nurse registry and may be reviewed by
4 the agency during their survey procedure.

5 (6)~~(11)~~ A person who is referred by a nurse registry
6 for contract in private residences and who is not a nurse
7 licensed under part I of chapter 464 may perform only those
8 services or care to clients that the person has been certified
9 to perform or trained to perform as required by law or rules
10 of the Agency for Health Care Administration or the Department
11 of Business and Professional Regulation. Providing services
12 beyond the scope authorized under this subsection constitutes
13 the unauthorized practice of medicine or a violation of the
14 Nurse Practice Act and is punishable as provided under chapter
15 458, chapter 459, or part I of chapter 464.

16 (7)~~(12)~~ Each nurse registry must require every
17 applicant for contract to complete an application form
18 providing the following information:

19 (a) The name, address, date of birth, and social
20 security number of the applicant.

21 (b) The educational background and employment history
22 of the applicant.

23 (c) The number and date of the applicable license or
24 certification.

25 (d) When appropriate, information concerning the
26 renewal of the applicable license, registration, or
27 certification.

28 (8)~~(13)~~ Each nurse registry must comply with the
29 procedures set forth in s. 400.512 for maintaining records of
30 the employment history of all persons referred for contract
31 and is subject to the standards and conditions set forth in

1 that section. However, an initial screening may not be
2 required for persons who have been continuously registered
3 with the nurse registry since September 30, 1990.

4 (9)~~(14)~~ The nurse registry must maintain the
5 application on file, and that file must be open to the
6 inspection of the Agency for Health Care Administration. The
7 nurse registry must maintain on file the name and address of
8 the client to whom the nurse or other nurse registry personnel
9 is sent for contract and the amount of the fee received by the
10 nurse registry. A nurse registry must maintain the file that
11 includes the application and other applicable documentation
12 for 3 years after the date of the last file entry of
13 client-related information.

14 (10)~~(15)~~ Nurse registries shall assist persons who
15 would need assistance and sheltering during evacuations
16 because of physical, mental, or sensory disabilities in
17 registering with the appropriate local emergency management
18 agency pursuant to s. 252.355.

19 (11)~~(16)~~ Each nurse registry shall prepare and
20 maintain a comprehensive emergency management plan that is
21 consistent with the criteria in this subsection and with the
22 local special needs plan. The plan shall be updated annually.
23 The plan shall specify how the nurse registry shall facilitate
24 the provision of continuous care by persons referred for
25 contract to persons who are registered pursuant to s. 252.355
26 during an emergency that interrupts the provision of care or
27 services in private residencies.

28 (a) All persons referred for contract who care for
29 persons registered pursuant to s. 252.355 must include in the
30 patient record a description of how care will be continued
31 during a disaster or emergency that interrupts the provision

1 of care in the patient's home. It shall be the responsibility
2 of the person referred for contract to ensure that continuous
3 care is provided.

4 (b) Each nurse registry shall maintain a current
5 prioritized list of patients in private residences who are
6 registered pursuant to s. 252.355 and are under the care of
7 persons referred for contract and who need continued services
8 during an emergency. This list shall indicate, for each
9 patient, if the client is to be transported to a special needs
10 shelter and if the patient is receiving skilled nursing
11 services. Nurse registries shall make this list available to
12 county health departments and to local emergency management
13 agencies upon request.

14 (c) Each person referred for contract who is caring
15 for a patient who is registered pursuant to s. 252.355 shall
16 provide a list of the patient's medication and equipment needs
17 to the nurse registry. Each person referred for contract shall
18 make this information available to county health departments
19 and to local emergency management agencies upon request.

20 (d) Each person referred for contract shall not be
21 required to continue to provide care to patients in emergency
22 situations that are beyond the person's control and that make
23 it impossible to provide services, such as when roads are
24 impassable or when patients do not go to the location
25 specified in their patient records.

26 (e) The comprehensive emergency management plan
27 required by this subsection is subject to review and approval
28 by the county health department. During its review, the county
29 health department shall ensure that, at a minimum, the local
30 emergency management agency, the Agency for Health Care
31 Administration, and the local chapter of the American Red

1 Cross or other lead sheltering agency are given the
2 opportunity to review the plan. The county health department
3 shall complete its review within 60 days after receipt of the
4 plan and shall either approve the plan or advise the nurse
5 registry of necessary revisions.

6 (f) The Agency for Health Care Administration shall
7 adopt rules establishing minimum criteria for the
8 comprehensive emergency management plan and plan updates
9 required by this subsection, with the concurrence of the
10 Department of Health and in consultation with the Department
11 of Community Affairs.

12 (12)~~(17)~~ All persons referred for contract in private
13 residences by a nurse registry must comply with the following
14 requirements for a plan of treatment:

15 (a) When, in accordance with the privileges and
16 restrictions imposed upon a nurse under part I of chapter 464,
17 the delivery of care to a patient is under the direction or
18 supervision of a physician or when a physician is responsible
19 for the medical care of the patient, a medical plan of
20 treatment must be established for each patient receiving care
21 or treatment provided by a licensed nurse in the home. The
22 original medical plan of treatment must be timely signed by
23 the physician and reviewed by him or her in consultation with
24 the licensed nurse at least every 2 months. Any additional
25 order or change in orders must be obtained from the physician
26 and reduced to writing and timely signed by the physician.
27 The delivery of care under a medical plan of treatment must be
28 substantiated by the appropriate nursing notes or
29 documentation made by the nurse in compliance with nursing
30 practices established under part I of chapter 464.

31

1 (b) Whenever a medical plan of treatment is
2 established for a patient, the initial medical plan of
3 treatment, any amendment to the plan, additional order or
4 change in orders, and copy of nursing notes must be filed in
5 the office of the nurse registry.

6 (13)~~(18)~~ The nurse registry must comply with the
7 notice requirements of s. 400.495, relating to abuse
8 reporting.

9 (14)~~(19)~~ In addition to any other penalties imposed
10 pursuant to this section or part, the agency may assess costs
11 related to an investigation that results in a successful
12 prosecution, ~~excluding costs associated with an attorney's~~
13 ~~time. If the agency imposes such an assessment and the~~
14 ~~assessment is not paid, and if challenged is not the subject~~
15 ~~of a pending appeal, prior to the renewal of the license, the~~
16 ~~license shall not be issued until the assessment is paid or~~
17 ~~arrangements for payment of the assessment are made.~~

18 (15)~~(20)~~ The Agency for Health Care Administration
19 shall adopt rules to implement this section and part II of
20 chapter 408.

21 Section 108. Section 400.509, Florida Statutes, is
22 amended to read:

23 400.509 Registration of particular service providers
24 exempt from licensure; certificate of registration; regulation
25 of registrants.--

26 (1) Any organization that provides companion services
27 or homemaker services and does not provide a home health
28 service to a person is exempt from licensure under this part.
29 However, any organization that provides companion services or
30 homemaker services must register with the agency.

31

1 (2) The requirements of part II of chapter 408 apply
2 to the provision of services that necessitate registration or
3 licensure pursuant to ss. 400.509-400.512 and ss.
4 408.801-408.819 and to entities registered by or applying for
5 such registration from the Agency for Health Care
6 Administration pursuant to ss. 400.509-400.512. Each applicant
7 for registration must comply with all provisions of part II of
8 chapter 408, with the exception of s. 408.810(6)-(10) and s.
9 408.812(3)-(5).~~Registration consists of annually filing with~~
10 ~~the agency, under oath, on forms provided by it, the following~~
11 ~~information:~~

12 ~~(a) If the registrant is a firm or partnership, the~~
13 ~~name, address, date of birth, and social security number of~~
14 ~~every member.~~

15 ~~(b) If the registrant is a corporation or association,~~
16 ~~its name and address; the name, address, date of birth, and~~
17 ~~social security number of each of its directors and officers;~~
18 ~~and the name and address of each person having at least a 5~~
19 ~~percent interest in the corporation or association.~~

20 ~~(c) The name, address, date of birth, and social~~
21 ~~security number of each person employed by or under contract~~
22 ~~with the organization.~~

23 (3) In accordance with s. 408.805, an applicant or
24 registrant shall pay a fee for each registration issued under
25 this part and part II of chapter 408. The amount of the fee
26 shall be \$50 per biennium.~~The agency shall charge a~~
27 ~~registration fee of \$25 to be submitted with the information~~
28 ~~required under subsection (2).~~

29 ~~(4) Each applicant for registration must comply with~~
30 ~~the following requirements:~~

31

1 ~~(a) Upon receipt of a completed, signed, and dated~~
2 ~~application, the agency shall require background screening, in~~
3 ~~accordance with the level 1 standards for screening set forth~~
4 ~~in chapter 435, of every individual who will have contact with~~
5 ~~the client. The agency shall require background screening of~~
6 ~~the managing employee or other similarly titled individual who~~
7 ~~is responsible for the operation of the entity, and of the~~
8 ~~financial officer or other similarly titled individual who is~~
9 ~~responsible for the financial operation of the entity,~~
10 ~~including billings for client services in accordance with the~~
11 ~~level 2 standards for background screening as set forth in~~
12 ~~chapter 435.~~

13 ~~(b) The agency may require background screening of any~~
14 ~~other individual who is affiliated with the applicant if the~~
15 ~~agency has a reasonable basis for believing that he or she has~~
16 ~~been convicted of a crime or has committed any other offense~~
17 ~~prohibited under the level 2 standards for screening set forth~~
18 ~~in chapter 435.~~

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

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

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

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

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

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

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

15 ~~(h) The agency may deny or revoke the registration of~~
16 ~~any applicant who:~~

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

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

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

26 (4)~~(5)~~ Each registrant must obtain the employment or
27 contract history of persons who are employed by or under
28 contract with the organization and who will have contact at
29 any time with patients or clients in their homes by:

30 (a) Requiring such persons to submit an employment or
31 contractual history to the registrant; and

1 (b) Verifying the employment or contractual history,
2 unless through diligent efforts such verification is not
3 possible. The agency shall prescribe by rule the minimum
4 requirements for establishing that diligent efforts have been
5 made.

6
7 There is no monetary liability on the part of, and no cause of
8 action for damages arises against, a former employer of a
9 prospective employee of or prospective independent contractor
10 with a registrant who reasonably and in good faith
11 communicates his or her honest opinions about the former
12 employee's or contractor's job performance. This subsection
13 does not affect the official immunity of an officer or
14 employee of a public corporation.

15 ~~(6) On or before the first day on which services are~~
16 ~~provided to a patient or client, any registrant under this~~
17 ~~part must inform the patient or client and his or her~~
18 ~~immediate family, if appropriate, of the right to report~~
19 ~~abusive, neglectful, or exploitative practices. The statewide~~
20 ~~toll-free telephone number for the central abuse hotline must~~
21 ~~be provided to patients or clients in a manner that is clearly~~
22 ~~legible and must include the words: "To report abuse, neglect,~~
23 ~~or exploitation, please call toll-free ... (phone number)...."~~
24 ~~Registrants must establish appropriate policies and procedures~~
25 ~~for providing such notice to patients or clients.~~

26 ~~(7) The provisions of s. 400.512 regarding screening~~
27 ~~apply to any person or business entity registered under this~~
28 ~~section on or after October 1, 1994.~~

29 ~~(8) Upon verification that all requirements for~~
30 ~~registration have been met, the Agency for Health Care~~

31

1 ~~Administration shall issue a certificate of registration valid~~
2 ~~for no more than 1 year.~~

3 ~~(9) The Agency for Health Care Administration may~~
4 ~~deny, suspend, or revoke the registration of a person that:~~

5 ~~(a) Fails to comply with this section or applicable~~
6 ~~rules.~~

7 ~~(b) Commits an intentional, reckless, or negligent act~~
8 ~~that materially affects the health or safety of a person~~
9 ~~receiving services.~~

10 ~~(10) The Agency for Health Care Administration may~~
11 ~~institute injunctive proceedings under s. 400.515.~~

12 (5)(11) A person that offers or advertises to the
13 public a service for which registration is required must
14 include in its advertisement the registration number issued by
15 the Agency for Health Care Administration.

16 ~~(12) It is unlawful for a person to offer or advertise~~
17 ~~to the public services, as defined by rule, without obtaining~~
18 ~~a certificate of registration from the Agency for Health Care~~
19 ~~Administration. It is unlawful for any holder of a~~
20 ~~certificate of registration to advertise or hold out to the~~
21 ~~public that he or she holds a certificate of registration for~~
22 ~~other than that for which he or she actually holds a~~
23 ~~certificate of registration. Any person who violates this~~
24 ~~subsection is subject to injunctive proceedings under s.~~
25 ~~400.515.~~

26 ~~(13) Any duly authorized officer or employee of the~~
27 ~~Agency for Health Care Administration has the right to make~~
28 ~~such inspections and investigations as are necessary in order~~
29 ~~to respond to complaints or to determine the state of~~
30 ~~compliance with this section and applicable rules.~~

31

1 ~~(a) If, in responding to a complaint, an officer or~~
2 ~~employee of the Agency for Health Care Administration has~~
3 ~~reason to believe that a crime has been committed, he or she~~
4 ~~shall notify the appropriate law enforcement agency.~~

5 ~~(b) If, in responding to a complaint, an officer or~~
6 ~~employee of the Agency for Health Care Administration has~~
7 ~~reason to believe that abuse, neglect, or exploitation has~~
8 ~~occurred, according to the definitions in chapter 415, he or~~
9 ~~she shall file a report under chapter 415.~~

10 (6)~~(14)~~ In addition to any other penalties imposed
11 pursuant to this section or part, the agency may assess costs
12 related to an investigation that results in a successful
13 prosecution, excluding costs associated with an attorney's
14 time. If the agency imposes such an assessment and the
15 assessment is not paid, and if challenged is not the subject
16 of a pending appeal, prior to the renewal of the registration,
17 the registration shall not be issued until the assessment is
18 paid or arrangements for payment of the assessment are made.

19 (7)~~(15)~~ The Agency for Health Care Administration
20 shall adopt rules to administer this section and part II of
21 chapter 408.

22 Section 109. Subsections (2) and (7) of section
23 400.512, Florida Statutes, are amended to read:

24 400.512 Screening of home health agency personnel;
25 nurse registry personnel; and companions and homemakers.--The
26 agency shall require employment or contractor screening as
27 provided in chapter 435, using the level 1 standards for
28 screening set forth in that chapter, for home health agency
29 personnel; persons referred for employment by nurse
30 registries; and persons employed by companion or homemaker
31 services registered under s. 400.509.

1 ~~(2) The administrator of each home health agency, the~~
2 ~~managing employee of each nurse registry, and the managing~~
3 ~~employee of each companion or homemaker service registered~~
4 ~~under s. 400.509 must sign an affidavit annually, under~~
5 ~~penalty of perjury, stating that all personnel hired,~~
6 ~~contracted with, or registered on or after October 1, 1994,~~
7 ~~who enter the home of a patient or client in their service~~
8 ~~capacity have been screened and that its remaining personnel~~
9 ~~have worked for the home health agency or registrant~~
10 ~~continuously since before October 1, 1994.~~

11 (7)(a) It is a misdemeanor of the first degree,
12 punishable under s. 775.082 or s. 775.083, for any person
13 willfully, knowingly, or intentionally to:

14 1. Fail, by false statement, misrepresentation,
15 impersonation, or other fraudulent means, to disclose in any
16 application for voluntary or paid employment a material fact
17 used in making a determination as to such person's
18 qualifications to be an employee under this section;

19 ~~2. Operate or attempt to operate an entity licensed or~~
20 ~~registered under this part with persons who do not meet the~~
21 ~~minimum standards for good moral character as contained in~~
22 ~~this section; or~~

23 2.3. Use information from the criminal records
24 obtained under this section for any purpose other than
25 screening that person for employment as specified in this
26 section or release such information to any other person for
27 any purpose other than screening for employment under this
28 section.

29 (b) It is a felony of the third degree, punishable
30 under s. 775.082, s. 775.083, or s. 775.084, for any person
31 willfully, knowingly, or intentionally to use information from

1 the juvenile records of a person obtained under this section
2 for any purpose other than screening for employment under this
3 section.

4 Section 110. Section 400.515, Florida Statutes, is
5 repealed.

6 Section 111. Subsections (6) and (7) of section
7 400.551, Florida Statutes, are amended to read:

8 400.551 Definitions.--As used in this part, the term:

9 (6) "Operator" means the licensee or person having
10 general administrative charge of an adult day care center.

11 (7) "Owner" means the licensee ~~owner~~ of an adult day
12 care center.

13 Section 112. Section 400.554, Florida Statutes, is
14 amended to read:

15 400.554 License requirement; fee; exemption;
16 display.--

17 (1) The requirements of part II of chapter 408 apply
18 to the provision of services that necessitate licensure
19 pursuant to this part and part II of chapter 408 and to
20 entities licensed by or applying for such licensure from the
21 Agency for Health Care Administration pursuant to this part.
22 However, an applicant for licensure is exempt from the
23 provisions of s. 408.810(10).~~It is unlawful to operate an~~
24 ~~adult day care center without first obtaining from the agency~~
25 ~~a license authorizing such operation. The agency is~~
26 ~~responsible for licensing adult day care centers in accordance~~
27 ~~with this part.~~

28 (2) Separate licenses are required for centers
29 operated on separate premises, even though operated under the
30 same management. Separate licenses are not required for
31 separate buildings on the same premises.

1 (3) In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part and part II of chapter 408. The
4 amount of the fee shall be established by rule and ~~The~~
5 ~~biennial license fee required of a center shall be determined~~
6 ~~by the department, but may not exceed \$150 per biennium.~~

7 (4) County-operated or municipally operated centers
8 applying for licensure under this part are exempt from the
9 payment of license fees.

10 ~~(5) The license for a center shall be displayed in a~~
11 ~~conspicuous place inside the center.~~

12 ~~(6) A license is valid only in the possession of the~~
13 ~~individual, firm, partnership, association, or corporation to~~
14 ~~which it is issued and is not subject to sale, assignment, or~~
15 ~~other transfer, voluntary or involuntary; nor is a license~~
16 ~~valid for any premises other than the premises for which~~
17 ~~originally issued.~~

18 Section 113. Section 400.555, Florida Statutes, is
19 amended to read:

20 400.555 Application for license.--

21 ~~(1) An application for a license to operate an adult~~
22 ~~day care center must be made to the agency on forms furnished~~
23 ~~by the agency and must be accompanied by the appropriate~~
24 ~~license fee unless the applicant is exempt from payment of the~~
25 ~~fee as provided in s. 400.554(4).~~

26 ~~(2)~~ In addition to all provisions of part II of
27 chapter 408,the applicant for licensure must furnish+

28 ~~(a)~~ a description of the physical and mental
29 capabilities and needs of the participants to be served and
30 the availability, frequency, and intensity of basic services
31 and of supportive and optional services to be provided.†

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

6 ~~(c) Proof of adequate liability insurance coverage.~~

7 ~~(d) Proof of compliance with level 2 background~~
8 ~~screening as required under s. 400.5572.~~

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

15 Section 114. Section 400.556, Florida Statutes, is
16 amended to read:

17 400.556 Denial or, ~~suspension~~, revocation of license;
18 emergency action; administrative fines; investigations and
19 inspections.--

20 (1) The agency may deny or, ~~revoke~~, ~~or suspend~~ a
21 license under this part, impose an action under s. 408.814, or
22 ~~may~~ impose an administrative fine against the owner of an
23 adult day care center or its operator or employee in the
24 manner provided in chapter 120 for a violation of any
25 provision of this part, part II of chapter 408, or applicable
26 rules.

27 (2) Each of the following actions by the owner of an
28 adult day care center or by its operator or employee is a
29 ground for action by the agency against the owner of the
30 center or its operator or employee:

31

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

3 ~~(b) A violation of this part or of any standard or~~
4 ~~rule under this part.~~

5 (b)(c) A failure of persons subject to level 2
6 background screening under s. 400.4174(1) to meet the
7 screening standards of s. 435.04, or the retention by the
8 center of an employee subject to level 1 background screening
9 standards under s. 400.4174(2) who does not meet the screening
10 standards of s. 435.03 and for whom exemptions from
11 disqualification have not been provided by the agency.

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

16 (d)(e) Multiple or repeated violations of this part or
17 of any standard or rule adopted under this part or part II of
18 chapter 408.

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

24 (3) The agency is responsible for all investigations
25 and inspections conducted pursuant to this part.

26 Section 115. Section 400.5565, Florida Statutes, is
27 amended to read:

28 400.5565 Administrative fines ~~interest~~.--

29 (1)(a) If the agency determines that an adult day care
30 center is not operated in compliance with this part, part II
31 of chapter 408, or applicable with rules adopted under this

1 ~~part~~, the agency, notwithstanding any other administrative
2 action it takes, shall make a reasonable attempt to discuss
3 with the owner each violation and recommended corrective
4 action prior to providing the owner with written notification.
5 The agency may request the submission of a corrective action
6 plan for the center which demonstrates a good faith effort to
7 remedy each violation by a specific date, subject to the
8 approval of the agency.

9 (b) The owner of a center or its operator or employee
10 found in violation of this part, part II of chapter 408, or
11 applicable of rules adopted under this part may be fined by
12 the agency. A fine may not exceed \$500 for each violation.
13 In no event, however, may such fines in the aggregate exceed
14 \$5,000.

15 (c) The failure to correct a violation by the date set
16 by the agency, or the failure to comply with an approved
17 corrective action plan, is a separate violation for each day
18 such failure continues, unless the agency approves an
19 extension to a specific date.

20 ~~(d) If the owner of a center or its operator or~~
21 ~~employee appeals an agency action under this section and the~~
22 ~~fine is upheld, the violator shall pay the fine, plus interest~~
23 ~~at the legal rate specified in s. 687.01 for each day that the~~
24 ~~fine remains unpaid after the date set by the agency for~~
25 ~~payment of the fine.~~

26 (2) In determining whether to impose a fine and in
27 fixing the amount of any fine, the agency shall consider the
28 following factors:

29 (a) The gravity of the violation, including the
30 probability that death or serious physical or emotional harm
31 to a participant will result or has resulted, the severity of

1 the actual or potential harm, and the extent to which the
2 provisions of the applicable statutes or rules were violated.

3 (b) Actions taken by the owner or operator to correct
4 violations.

5 (c) Any previous violations.

6 (d) The financial benefit to the center of committing
7 or continuing the violation.

8 Section 116. Section 400.557, Florida Statutes, is
9 amended to read:

10 400.557 ~~Expiration of license; renewal;~~Conditional
11 license or permit.--

12 ~~(1) A license issued for the operation of an adult day
13 care center, unless sooner suspended or revoked, expires 2
14 years after the date of issuance. The agency shall notify a
15 licensee at least 120 days before the expiration date that
16 license renewal is required to continue operation. The
17 notification must be provided electronically or by mail
18 delivery. At least 90 days prior to the expiration date, an
19 application for renewal must be submitted to the agency. A
20 license shall be renewed, upon the filing of an application on
21 forms furnished by the agency, if the applicant has first met
22 the requirements of this part and of the rules adopted under
23 this part. The applicant must file with the application
24 satisfactory proof of financial ability to operate the center
25 in accordance with the requirements of this part and in
26 accordance with the needs of the participants to be served and
27 an affidavit of compliance with the background screening
28 requirements of s. 400.5572.~~

29 ~~(2) A licensee against whom a revocation or suspension
30 proceeding is pending at the time for license renewal may be
31 issued a conditional license effective until final disposition~~

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

5 (3) The agency may issue a conditional license to an
6 applicant for license renewal or change of ownership if the
7 applicant fails to meet all standards and requirements for
8 licensure. A conditional license issued under this subsection
9 must be limited to a specific period not exceeding 6 months,
10 as determined by the agency, and must be accompanied by an
11 approved plan of correction.

12 Section 117. Section 400.5572, Florida Statutes, is
13 amended to read:

14 400.5572 Background screening.--

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

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

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

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

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

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

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

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

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

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

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

21 Section 118. Sections 400.5575 and 400.558, Florida
22 Statutes, are repealed.

23 Section 119. Section 400.559, Florida Statutes, is
24 amended to read:

25 400.559 Closing ~~or change of owner or operator~~ of
26 center.--

27 ~~(1)~~ Before operation of an adult day care center may
28 be voluntarily discontinued, the operator must inform the
29 ~~agency in writing~~ at least 60 days prior to the discontinuance
30 of operation. ~~The operator must also, at such time, inform~~
31

1 each participant of the fact and the proposed date of such
2 discontinuance.

3 ~~(2) Immediately upon discontinuance of the operation~~
4 ~~of a center, the owner or operator shall surrender the license~~
5 ~~for the center to the agency, and the license shall be~~
6 ~~canceled by the agency.~~

7 ~~(3) If a center has a change of ownership, the new~~
8 ~~owner shall apply to the agency for a new license at least 60~~
9 ~~days before the date of the change of ownership.~~

10 ~~(4) If a center has a change of operator, the new~~
11 ~~operator shall notify the agency in writing within 30 days~~
12 ~~after the change of operator.~~

13 Section 120. Section 400.56, Florida Statutes, is
14 amended to read:

15 400.56 Right of entry and inspection.--In accordance
16 with s. 408.811,~~Any duly designated officer or employee of~~
17 ~~the agency or department has the right to enter the premises~~
18 ~~of any adult day care center licensed pursuant to this part,~~
19 ~~at any reasonable time, in order to determine the state of~~
20 ~~compliance with this part, part II of chapter 408, and~~
21 applicable ~~the rules or standards in force pursuant to this~~
22 ~~part. The right of entry and inspection also extends to any~~
23 ~~premises that the agency has reason to believe are being~~
24 ~~operated as a center without a license, but no entry or~~
25 ~~inspection of any unlicensed premises may be made without the~~
26 ~~permission of the owner or operator unless a warrant is first~~
27 ~~obtained from the circuit court authorizing entry or~~
28 ~~inspection. Any application for a center license or license~~
29 ~~renewal made pursuant to this part constitutes permission for,~~
30 ~~and complete acquiescence in, any entry or inspection of the~~
31 ~~premises for which the license is sought in order to~~

1 ~~facilitate verification of the information submitted on or in~~
2 ~~connection with the application.~~

3 Section 121. Section 400.562, Florida Statutes, is
4 amended to read:

5 400.562 Rules establishing standards.--

6 (1) The agency ~~Department of Elderly Affairs~~, in
7 conjunction with the Department of Elderly Affairs ~~agency~~,
8 shall adopt rules to implement the provisions of this part and
9 part II of chapter 408. The rules must include reasonable and
10 fair standards. Any conflict between these standards and those
11 that may be set forth in local, county, or municipal
12 ordinances shall be resolved in favor of those having
13 statewide effect. Such standards must relate to:

14 (a) The maintenance of adult day care centers with
15 respect to plumbing, heating, lighting, ventilation, and other
16 building conditions, including adequate meeting space, to
17 ensure the health, safety, and comfort of participants and
18 protection from fire hazard. Such standards may not conflict
19 with chapter 553 and must be based upon the size of the
20 structure and the number of participants.

21 (b) The number and qualifications of all personnel
22 employed by adult day care centers who have responsibilities
23 for the care of participants.

24 (c) All sanitary conditions within adult day care
25 centers and their surroundings, including water supply, sewage
26 disposal, food handling, and general hygiene, and maintenance
27 of sanitary conditions, to ensure the health and comfort of
28 participants.

29 (d) Basic services provided by adult day care centers.

30 (e) Supportive and optional services provided by adult
31 day care centers.

1 (f) Data and information relative to participants and
2 programs of adult day care centers, including, but not limited
3 to, the physical and mental capabilities and needs of the
4 participants, the availability, frequency, and intensity of
5 basic services and of supportive and optional services
6 provided, the frequency of participation, the distances
7 traveled by participants, the hours of operation, the number
8 of referrals to other centers or elsewhere, and the incidence
9 of illness.

10 (g) Components of a comprehensive emergency management
11 plan, developed in consultation with the Department of Health,
12 the Department of Elderly Affairs ~~Agency for Health Care~~
13 ~~Administration~~, and the Department of Community Affairs.

14 ~~(2) Pursuant to s. 119.07, the agency may charge a fee~~
15 ~~for furnishing a copy of this part, or of the rules adopted~~
16 ~~under this part, to any person upon request for the copy.~~

17 ~~(2)(3)~~ Pursuant to this part, s. 408.811, and
18 applicable rules adopted by the department, the agency may
19 conduct an abbreviated biennial inspection of key
20 quality-of-care standards, in lieu of a full inspection, of a
21 center that has a record of good performance. However, the
22 agency must conduct a full inspection of a center that has had
23 one or more confirmed complaints within the licensure period
24 immediately preceding the inspection or which has a serious
25 problem identified during the abbreviated inspection. The
26 agency shall by rule develop the key quality-of-care
27 standards, taking into consideration the comments and
28 recommendations of the Department of Elderly Affairs and of
29 provider groups. ~~These standards shall be included in rules~~
30 ~~adopted by the Department of Elderly Affairs.~~

31

1 Section 122. Section 400.564, Florida Statutes, is
2 repealed.

3 Section 123. Section 400.602, Florida Statutes, is
4 amended to read:

5 400.602 Licensure required; prohibited acts;
6 exemptions; ~~display~~, transferability of license.--

7 (1)~~(a)~~ The requirements of part II of chapter 408
8 apply to the provision of services that necessitate licensure
9 pursuant to this part and part II of chapter 408 and to
10 entities licensed by or applying for such licensure from the
11 Agency for Health Care Administration pursuant to this part.
12 ~~It is unlawful to operate or maintain a hospice without first~~
13 ~~obtaining a license from the agency.~~

14 ~~(b) It is unlawful for~~ Any person or legal entity not
15 licensed as a hospice under this part may not ~~to~~ use the word
16 "hospice" in its name, ~~or to~~ offer or advertise hospice
17 services or hospice-like services in such a way as to mislead
18 a person to believe that the offeror is a hospice licensed
19 under this part.

20 (2) Services provided by a hospital, nursing home, or
21 other health care facility, health care provider, or
22 caregiver, or under the Community Care for the Elderly Act, do
23 not constitute a hospice unless the facility, provider, or
24 caregiver establishes a separate and distinct administrative
25 program to provide home, residential, and homelike inpatient
26 hospice services.

27 (3)(a) A separately licensed hospice may not use a
28 name which is substantially the same as the name of another
29 hospice licensed under this part.

30
31

1 (b) A licensed hospice which intends to change its
2 name or address must notify the agency at least 60 days before
3 making the change.

4 ~~(4) The license shall be displayed in a conspicuous~~
5 ~~place inside the hospice program office; shall be valid only~~
6 ~~in the possession of the person or public agency to which it~~
7 ~~is issued; shall not be subject to sale, assignment, or other~~
8 ~~transfer, voluntary or involuntary; and shall not be valid for~~
9 ~~any hospice other than the hospice for which originally~~
10 ~~issued.~~

11 (4)~~(5)~~ Notwithstanding s. 400.601(3), any hospice
12 operating in corporate form exclusively as a hospice,
13 incorporated on or before July 1, 1978, may be transferred to
14 a for-profit or not-for-profit entity, and may transfer the
15 license to that entity.

16 (5)~~(6)~~ Notwithstanding s. 400.601(3), at any time
17 after July 1, 1995, any entity entitled to licensure under
18 subsection(4)~~(5)~~ may obtain a license for up to two
19 additional hospices in accordance with the other requirements
20 of this part and upon receipt of any certificate of need that
21 may be required under the provisions of ss. 408.031-408.045.

22 Section 124. Section 400.605, Florida Statutes, is
23 amended to read:

24 400.605 Administration; forms; fees; rules;
25 inspections; fines.--

26 (1) The agency ~~department~~, in consultation with the
27 department ~~agency~~, shall by rule establish minimum standards
28 and procedures for a hospice pursuant to this part and part II
29 of chapter 408. The rules must include:

30 ~~(a) License application procedures and requirements.~~

31

1 (a)~~(b)~~ The qualifications of professional and
2 ancillary personnel to ensure the provision of appropriate and
3 adequate hospice care.

4 (b)~~(c)~~ Standards and procedures for the administrative
5 management of a hospice.

6 (c)~~(d)~~ Standards for hospice services that ensure the
7 provision of quality patient care.

8 (d)~~(e)~~ Components of a patient plan of care.

9 (e)~~(f)~~ Procedures relating to the implementation of
10 advanced directives and do-not-resuscitate orders.

11 (f)~~(g)~~ Procedures for maintaining and ensuring
12 confidentiality of patient records.

13 (g)~~(h)~~ Standards for hospice care provided in
14 freestanding inpatient facilities that are not otherwise
15 licensed medical facilities and in residential care facilities
16 such as nursing homes, assisted living facilities, adult
17 family care homes, and hospice residential units and
18 facilities.

19 (h)~~(i)~~ Physical plant standards for hospice
20 residential and inpatient facilities and units.

21 (i)~~(j)~~ Components of a comprehensive emergency
22 management plan, developed in consultation with the Department
23 of Health, the Department of Elderly Affairs, and the
24 Department of Community Affairs.

25 (j)~~(k)~~ Standards and procedures relating to the
26 establishment and activities of a quality assurance and
27 utilization review committee.

28 (k)~~(l)~~ Components and procedures relating to the
29 collection of patient demographic data and other information
30 on the provision of hospice care in this state.

31

1 (2) In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part and part II of chapter 408. The
4 amount of the fee shall be established by rule and may not
5 exceed \$1,200 per biennium.~~The agency shall:~~

6 ~~(a) Prepare and furnish all forms necessary under the~~
7 ~~provisions of this part in relation to applications for~~
8 ~~licensure or licensure renewals.~~

9 ~~(b) Collect from the applicant at the time of filing~~
10 ~~an application for a license or at the time of renewal of a~~
11 ~~license a fee which must be reasonably calculated to cover the~~
12 ~~cost of regulation under this part, but may not exceed \$600~~
13 ~~per program. All fees collected under this part shall be~~
14 ~~deposited in the Health Care Trust Fund for the administration~~
15 ~~of this part.~~

16 ~~(c) Issue hospice licenses to all applicants which~~
17 ~~meet the provisions of this part and applicable rules.~~

18 (3)(d) In accordance with s. 408.811, the agency shall
19 conduct annual licensure inspections of all licensees, except
20 that licensure inspections may be conducted biennially for
21 hospices having a 3-year record of substantial compliance. The
22 agency shall

23 ~~(e) conduct such inspections and investigations as are~~
24 ~~necessary in order to determine the state of compliance with~~
25 ~~the provisions of this part, part II of chapter 408, and~~
26 ~~applicable adopted rules. The right of inspection also~~
27 ~~extends to any program that the agency has reason to believe~~
28 ~~is offering or advertising itself as a hospice without a~~
29 ~~license, but no inspection may be made without the permission~~
30 ~~of the owner or person in charge thereof unless a warrant is~~
31 ~~first obtained from a circuit court authorizing such~~

1 ~~inspection. An application for a license or license renewal~~
2 ~~made pursuant to this part constitutes permission for an~~
3 ~~inspection of the hospice for which the license is sought in~~
4 ~~order to facilitate verification of the information submitted~~
5 ~~on or in connection with the application.~~

6 (4)(f) In accordance with part II of chapter 408, the
7 agency may impose an administrative fine for any violation of
8 the provisions of this part, part II of chapter 408, or
9 applicable rules.

10 Section 125. Section 400.606, Florida Statutes, is
11 amended to read:

12 400.606 License; application; renewal; conditional
13 license or permit; certificate of need.--

14 (1) ~~A license application must be filed on a form~~
15 ~~provided by the agency and must be accompanied by the~~
16 ~~appropriate license fee as well as satisfactory proof that the~~
17 ~~hospice is in compliance with this part and any rules adopted~~
18 ~~by the department and proof of financial ability to operate~~
19 ~~and conduct the hospice in accordance with the requirements of~~
20 ~~this part.~~ The initial application and change-of-ownership
21 application must be accompanied by a plan for the delivery of
22 home, residential, and homelike inpatient hospice services to
23 terminally ill persons and their families. Such plan must
24 contain, but need not be limited to:

25 (a) The estimated average number of terminally ill
26 persons to be served monthly.

27 (b) The geographic area in which hospice services will
28 be available.

29 (c) A listing of services which are or will be
30 provided, either directly by the applicant or through
31 contractual arrangements with existing providers.

1 (d) Provisions for the implementation of hospice home
2 care within 3 months after licensure.

3 (e) Provisions for the implementation of hospice
4 homelike inpatient care within 12 months after licensure.

5 (f) The number and disciplines of professional staff
6 to be employed.

7 (g) The name and qualifications of any existing or
8 potential contractee.

9 (h) A plan for attracting and training volunteers.

10 (i) The projected annual operating cost of the
11 hospice.

12 ~~(j) A statement of financial resources and personnel
13 available to the applicant to deliver hospice care.~~

14
15 If the applicant is licensed to operate an existing health
16 care provider, the application must be accompanied by a copy
17 of the most recent profit-loss statement and, if applicable,
18 the most recent licensure inspection report.

19 ~~(2) Each applicant must submit to the agency with its
20 application a description and explanation of any exclusions,
21 permanent suspensions, or terminations from the Medicaid or
22 Medicare programs of the owner, if an individual; of any
23 officer or board member of the hospice, if the owner is a
24 firm, corporation, partnership, or association; or of any
25 person owning 5 percent or more of the hospice. Proof of
26 compliance with disclosure of ownership and control interest
27 requirements of the Medicaid or Medicare programs may be
28 accepted in lieu of this submission.~~

29 ~~(2)(3) A license issued for the operation of a
30 hospice, unless sooner suspended or revoked, shall expire
31 automatically 1 year from the date of issuance. Sixty days~~

1 ~~prior to the expiration date, a hospice wishing to renew its~~
2 ~~license shall submit an application for renewal to the agency~~
3 ~~on forms furnished by the agency. The agency shall renew the~~
4 ~~license if the applicant has first met the requirements~~
5 ~~established under this part and all applicable rules and has~~
6 ~~provided the information described under this section in~~
7 ~~addition to the application. However,~~The application for
8 license renewal shall be accompanied by an update of the plan
9 for delivery of hospice care only if information contained in
10 the plan submitted pursuant to subsection (1) is no longer
11 applicable.

12 ~~(4) A hospice against which a revocation or suspension~~
13 ~~proceeding is pending at the time of license renewal may be~~
14 ~~issued a conditional license by the agency effective until~~
15 ~~final disposition of such proceeding. If judicial relief is~~
16 ~~sought from the final agency action, the court having~~
17 ~~jurisdiction may issue a conditional permit for the duration~~
18 ~~of the judicial proceeding.~~

19 (3)~~(5)~~ The agency shall not issue a license to a
20 hospice that fails to receive a certificate of need under the
21 provisions of ss. 408.031-408.045. A licensed hospice is a
22 health care facility as that term is used in s. 408.039(5) and
23 is entitled to initiate or intervene in an administrative
24 hearing.

25 (4)~~(6)~~ A freestanding hospice facility that is
26 primarily engaged in providing inpatient and related services
27 and that is not otherwise licensed as a health care facility
28 shall be required to obtain a certificate of need. However, a
29 freestanding hospice facility with six or fewer beds shall not
30 be required to comply with institutional standards such as,
31

1 but not limited to, standards requiring sprinkler systems,
2 emergency electrical systems, or special lavatory devices.

3 Section 126. Section 400.6065, Florida Statutes, is
4 amended to read:

5 400.6065 Background screening.--

6 ~~(1) Upon receipt of a completed application under s.~~
7 ~~400.606, the agency shall require level 2 background screening~~
8 ~~on each of the following persons, who shall be considered~~
9 ~~employees for the purposes of conducting screening under~~
10 ~~chapter 435:~~

11 ~~(a) The hospice administrator and financial officer.~~

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

1 ~~(2) Proof of compliance with level 2 screening~~
2 ~~standards which has been submitted within the previous 5 years~~
3 ~~to meet any facility or professional licensure requirements of~~
4 ~~the agency or the Department of Health satisfies the~~
5 ~~requirements of this section.~~

6 ~~(3) The agency may grant a provisional license to a~~
7 ~~hospice applying for an initial license when each individual~~
8 ~~required by this section to undergo screening has completed~~
9 ~~the Department of Law Enforcement background check, but has~~
10 ~~not yet received results from the Federal Bureau of~~
11 ~~Investigation.~~

12 (1)~~(4)~~ The agency shall require employment or
13 contractor screening as provided in chapter 435, using the
14 level 1 standards for screening set forth in that chapter, for
15 hospice personnel.

16 (2)~~(5)~~ The agency may grant exemptions from
17 disqualification from employment under this section as
18 provided in s. 435.07.

19 ~~(6) The administration of each hospice must sign an~~
20 ~~affidavit annually, under penalty of perjury, stating that all~~
21 ~~personnel employed or contracted with on or after October 1,~~
22 ~~1998, who provide hospice services in a facility, or who enter~~
23 ~~the home of a patient in their service capacity, have been~~
24 ~~screened.~~

25 (3)~~(7)~~ Proof of compliance with the screening
26 requirements of chapter 435 shall be accepted in lieu of the
27 requirements of this section if the person has been
28 continuously employed or registered without a breach in
29 service that exceeds 180 days, the proof of compliance is not
30 more than 2 years old, and the person has been screened, at
31 the discretion of the hospice.

1 (4)~~(8)~~(a) It is a misdemeanor of the first degree,
2 punishable under s. 775.082 or s. 775.083, for any person
3 willfully, knowingly, or intentionally to:

4 1. Fail, by false statement, misrepresentation,
5 impersonation, or other fraudulent means, to disclose in any
6 application for voluntary or paid employment a material fact
7 used in making a determination as to such person's
8 qualifications to be employed or contracted with under this
9 section;

10 ~~2. Operate or attempt to operate an entity licensed~~
11 ~~under this part with persons who do not meet the minimum~~
12 ~~standards for good moral character as contained in this~~
13 ~~section; or~~

14 2.3. Use information from the criminal records
15 obtained under this section for any purpose other than
16 screening as specified in this section, or release such
17 information to any other person for any purpose other than
18 screening under this section.

19 (b) It is a felony of the third degree, punishable
20 under s. 775.082, s. 775.083, or s. 775.084, for any person
21 willfully, knowingly, or intentionally to use information from
22 the juvenile records of a person obtained under this section
23 for any purpose other than screening for employment under this
24 section.

25 Section 127. Section 400.607, Florida Statutes, is
26 amended to read:

27 400.607 Denial, ~~suspension~~, or revocation of license;
28 imposition of administrative fine; grounds; injunctions.--

29 (1) The agency may deny or, ~~revoke~~, ~~or suspend~~ a
30 license, impose a moratorium, or impose an administrative
31 fine, which may not exceed \$5,000 per violation, for the

1 violation of any provision of this part, part II of chapter
2 408, or applicable rules in the manner provided in chapter
3 ~~120.~~

4 (2) Any of the following actions by a licensed hospice
5 or any of its employees shall be grounds for action by the
6 agency against a hospice:

7 (a) A violation of the provisions of this part or
8 applicable rules.

9 (b) An intentional or negligent act materially
10 affecting the health or safety of a patient.

11 ~~(3) The agency may deny or revoke a license upon a~~
12 ~~determination that:~~

13 ~~(a) Persons subject to level 2 background screening~~
14 ~~under s. 400.6065 do not meet the screening standards of s.~~
15 ~~435.04, and exemptions from disqualification have not been~~
16 ~~provided by the agency.~~

17 ~~(b) An officer, board member, or person owning 5~~
18 ~~percent or more of the hospice has been excluded, permanently~~
19 ~~suspended, or terminated from the Medicare or Medicaid~~
20 ~~programs.~~

21 (3)(4) If, 3 months after the date of obtaining a
22 license, or at any time thereafter, a hospice does not have in
23 operation the home-care component of hospice care, the agency
24 shall immediately revoke the license of such hospice.

25 (4)(5) If, 12 months after the date of obtaining a
26 license pursuant to s. 400.606, or at any time thereafter, a
27 hospice does not have in operation the inpatient components of
28 hospice care, the agency shall immediately revoke the license
29 of such hospice.

30 ~~(6) The agency may institute a civil action in a court~~
31 ~~of competent jurisdiction to seek injunctive relief to enforce~~

1 ~~compliance with this part or any rule adopted pursuant to this~~
2 ~~part.~~

3 (5)~~(7)~~ The remedies set forth in this section are
4 independent of and cumulative to other remedies provided by
5 law.

6 Section 128. Subsection (8) of section 400.6095,
7 Florida Statutes, is amended to read:

8 400.6095 Patient admission; assessment; plan of care;
9 discharge; death.--

10 (8) The hospice care team may withhold or withdraw
11 cardiopulmonary resuscitation if presented with an order not
12 to resuscitate executed pursuant to s. 401.45. The agency
13 ~~department~~ shall adopt rules providing for the implementation
14 of such orders. Hospice staff shall not be subject to criminal
15 prosecution or civil liability, nor be considered to have
16 engaged in negligent or unprofessional conduct, for
17 withholding or withdrawing cardiopulmonary resuscitation
18 pursuant to such an order and applicable rules ~~adopted by the~~
19 ~~department~~. The absence of an order to resuscitate executed
20 pursuant to s. 401.45 does not preclude a physician from
21 withholding or withdrawing cardiopulmonary resuscitation as
22 otherwise permitted by law.

23 Section 129. Subsection (5) of section 400.617,
24 Florida Statutes, is amended to read:

25 400.617 Legislative intent; purpose.--

26 (5) Rules of the agency ~~department~~ relating to adult
27 family-care homes shall be as minimal and flexible as possible
28 to ensure the protection of residents while minimizing the
29 obstacles that could inhibit the establishment of adult
30 family-care homes.

31

1 Section 130. Section 400.619, Florida Statutes, is
2 amended to read:

3 400.619 Licensure ~~application and renewal.~~--

4 (1) The requirements of part II of chapter 408 apply
5 to the provision of services that necessitate licensure
6 pursuant to this part and part II of chapter 408 and to
7 entities licensed by or applying for such licensure from the
8 Agency for Health Care Administration pursuant to this part.

9 However, an applicant for licensure is exempt from the
10 provisions of s. 408.810(7), (8), (9), and (10).~~Each person~~
11 ~~who intends to be an adult family care home provider must~~
12 ~~apply for a license from the agency at least 90 days before~~
13 ~~the applicant intends to operate the adult family care home.~~

14 (2) A person who intends to be an adult family-care
15 home provider must own or rent the adult family-care home that
16 is to be licensed and reside therein.

17 (3) In accordance with s. 408.805, an applicant or
18 licensee shall pay a fee for each license application
19 submitted under this part and part II of chapter 408. The
20 amount of the fee shall be \$200 per biennium.~~The agency shall~~
21 ~~notify a licensee at least 120 days before the expiration date~~
22 ~~that license renewal is required to continue operation. The~~
23 ~~notification must be provided electronically or by mail~~
24 ~~delivery. Application for a license or annual license renewal~~
25 ~~must be made on a form provided by the agency, signed under~~
26 ~~oath, and must be accompanied by a licensing fee of \$100 per~~
27 ~~year.~~

28 (4) Upon receipt of a completed license application or
29 license renewal, and the fee, the agency shall initiate a
30 level 1 background screening as provided under chapter 435 on
31 the adult family-care home provider, the designated relief

1 person, all adult household members, and all staff members.
2 The applicant or licensee is responsible for paying the fees
3 associated with obtaining the required screening.The agency
4 shall conduct an onsite visit to the home that is to be
5 licensed.

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

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

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

29 (5)(6) Unless the adult family-care home is a
30 community residential home subject to chapter 419, the
31 applicant must provide documentation, signed by the

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

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

14 ~~(8) A license is effective for 1 year after the date~~
15 ~~of issuance unless revoked sooner. Each license must state~~
16 ~~the name of the provider, the address of the home to which the~~
17 ~~license applies, and the maximum number of residents of the~~
18 ~~home. Failure to timely file a license renewal application~~
19 ~~shall result in a late fee equal to 50 percent of the license~~
20 ~~fee.~~

21 ~~(9) A license is not transferable or applicable to any~~
22 ~~location or person other than the location and person~~
23 ~~indicated on the license.~~

24 (7)~~(10)~~ The licensed maximum capacity of each adult
25 family-care home is based on the service needs of the
26 residents and the capability of the provider to meet the needs
27 of the residents. Any relative who lives in the adult
28 family-care home and who is a disabled adult or frail elder
29 must be included in that limitation.

30 (8)~~(11)~~ Each adult family-care home must designate at
31 least one licensed space for a resident receiving optional

1 state supplementation. The Department of Children and Family
2 Services shall specify by rule the procedures to be followed
3 for referring residents who receive optional state
4 supplementation to adult family-care homes. Those homes
5 licensed as adult foster homes or assisted living facilities
6 prior to January 1, 1994, that convert to adult family-care
7 homes, are exempt from this requirement.

8 (9)~~(12)~~ The agency may issue a conditional license to
9 a provider for the purpose of bringing the adult family-care
10 home into compliance with licensure requirements. A
11 conditional license must be limited to a specific period, not
12 exceeding 6 months. The agency ~~department~~ shall, by rule,
13 establish criteria for issuing conditional licenses.

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

19 (10)~~(14)~~ The agency ~~department~~ may adopt rules to
20 establish procedures, identify forms, specify documentation,
21 and clarify terms, as necessary, to administer this section
22 and part II of chapter 408.

23 Section 131. Section 400.6194, Florida Statutes, is
24 amended to read:

25 400.6194 Denial or~~,revocation,or suspension~~ of a
26 license.--In addition to the requirements of part II of
27 chapter 408,the agency may deny,~~suspend,~~or revoke a license
28 for any of the following reasons:

29 (1) Failure of any of the persons required to undergo
30 background screening under s. 400.619 to meet the level 1
31

1 screening standards of s. 435.03, unless an exemption from
2 disqualification has been provided by the agency.

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

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

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

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

14 (2)(6) Failure to correct cited fire code violations
15 that threaten the health, safety, or welfare of residents.

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

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

21 Section 132. Section 400.6196, Florida Statutes, is
22 amended to read:

23 400.6196 Classification of deficiencies;
24 administrative fines ~~Violations; penalties.~~--

25 (1) In accordance with part II of chapter 408, and in
26 addition to any other liability or penalty provided by law,
27 the agency may impose an administrative fine against a civil
28 penalty on a provider according to the following
29 classification for a violation of any provision of this part,
30 part II of chapter 408, or applicable rules:

31

1 (a) Class I violations are those conditions or
2 practices related to the operation and maintenance of an adult
3 family-care home or to the care of residents which the agency
4 determines present an imminent danger to the residents or
5 guests of the facility or a substantial probability that death
6 or serious physical or emotional harm would result therefrom.
7 The condition or practice that constitutes a class I violation
8 must be abated or eliminated within 24 hours, unless a fixed
9 period, as determined by the agency, is required for
10 correction. A class I deficiency is subject to an
11 administrative fine in an amount not less than \$500 and not
12 exceeding \$1,000 for each violation. A fine may be levied
13 notwithstanding the correction of the deficiency.

14 (b) Class II violations are those conditions or
15 practices related to the operation and maintenance of an adult
16 family-care home or to the care of residents which the agency
17 determines directly threaten the physical or emotional health,
18 safety, or security of the residents, other than class I
19 violations. A class II violation is subject to an
20 administrative fine in an amount not less than \$250 and not
21 exceeding \$500 for each violation. A citation for a class II
22 violation must specify the time within which the violation is
23 required to be corrected. If a class II violation is corrected
24 within the time specified, no civil penalty shall be imposed,
25 unless it is a repeated offense.

26 (c) Class III violations are those conditions or
27 practices related to the operation and maintenance of an adult
28 family-care home or to the care of residents which the agency
29 determines indirectly or potentially threaten the physical or
30 emotional health, safety, or security of residents, other than
31 class I or class II violations. A class III violation is

1 subject to an administrative fine in an amount not less than
2 \$100 and not exceeding \$250 for each violation. A citation for
3 a class III violation shall specify the time within which the
4 violation is required to be corrected. If a class III
5 violation is corrected within the time specified, no civil
6 penalty shall be imposed, unless it is a repeated offense.

7 (d) Class IV violations are those conditions or
8 occurrences related to the operation and maintenance of an
9 adult family-care home, or related to the required reports,
10 forms, or documents, which do not have the potential of
11 negatively affecting the residents. A provider that does not
12 correct a class IV violation within the time limit specified
13 by the agency is subject to an administrative fine in an
14 amount not less than \$50 and not exceeding \$100 for each
15 violation. Any class IV violation that is corrected during the
16 time the agency survey is conducted will be identified as an
17 agency finding and not as a violation.

18 (2) The agency may impose an administrative fine for
19 violations which do not qualify as class I, class II, class
20 III, or class IV violations. The amount of the fine shall not
21 exceed \$250 for each violation or \$2,000 in the aggregate.
22 Unclassified violations include:

23 (a) Violating any term or condition of a license.

24 (b) Violating any provision of rule adopted under this
25 part, part II of chapter 408, or applicable rules.

26 (c) Failure to follow the criteria and procedures
27 provided under part I of chapter 394 relating to the
28 transportation, voluntary admission, and involuntary
29 examination of adult family-care home residents.

30 (d) Exceeding licensed capacity.

31

1 (e) Providing services beyond the scope of the
2 license.

3 (f) Violating a moratorium.

4 ~~(3) Each day during which a violation occurs~~
5 ~~constitutes a separate offense.~~

6 (3)~~(4)~~ In determining whether a penalty is to be
7 imposed, and in fixing the amount of any penalty to be
8 imposed, the agency must consider:

9 (a) The gravity of the violation.

10 (b) Actions taken by the provider to correct a
11 violation.

12 (c) Any previous violation by the provider.

13 (d) The financial benefit to the provider of
14 committing or continuing the violation.

15 (4)~~(5)~~ As an alternative to or in conjunction with an
16 administrative action against a provider, the agency may
17 request a plan of corrective action that demonstrates a good
18 faith effort to remedy each violation by a specific date,
19 subject to the approval of the agency.

20 (5)~~(6)~~ The department shall set forth, by rule, notice
21 requirements and procedures for correction of deficiencies.

22 ~~(7) Civil penalties paid by a provider must be~~
23 ~~deposited into the Department of Elderly Affairs~~
24 ~~Administrative Trust Fund and used to offset the expenses of~~
25 ~~departmental training and education for adult family-care home~~
26 ~~providers.~~

27 ~~(8) The agency may impose an immediate moratorium on~~
28 ~~admissions to any adult family-care home if the agency finds~~
29 ~~that a condition in the home presents a threat to the health,~~
30 ~~safety, or welfare of its residents. The department may by~~
31 ~~rule establish facility conditions that constitute grounds for~~

1 ~~imposing a moratorium and establish procedures for imposing~~
2 ~~and lifting a moratorium.~~

3 Section 133. Section 400.621, Florida Statutes, is
4 amended to read:

5 400.621 Rules and standards relating to adult
6 family-care homes.--

7 (1) The agency ~~department~~, in consultation with the
8 Department of Health, the Department of Children and Family
9 Services, and the department ~~agency~~ shall, by rule, establish
10 minimum standards to ensure the health, safety, and well-being
11 of each resident in the adult family-care home pursuant to
12 this part and part II of chapter 408. The rules must address:

13 (a) Requirements for the physical site of the facility
14 and facility maintenance.

15 (b) Services that must be provided to all residents of
16 an adult family-care home and standards for such services,
17 which must include, but need not be limited to:

- 18 1. Room and board.
- 19 2. Assistance necessary to perform the activities of
20 daily living.
- 21 3. Assistance necessary to administer medication.
- 22 4. Supervision of residents.
- 23 5. Health monitoring.
- 24 6. Social and leisure activities.

25 (c) Standards and procedures for license application
26 and annual license renewal, advertising, proper management of
27 each resident's funds and personal property and personal
28 affairs, financial ability to operate, medication management,
29 inspections, complaint investigations, and facility, staff,
30 and resident records.

31

1 (d) Qualifications, training, standards, and
2 responsibilities for providers and staff.

3 (e) Compliance with chapter 419, relating to community
4 residential homes.

5 (f) Criteria and procedures for determining the
6 appropriateness of a resident's placement and continued
7 residency in an adult family-care home. A resident who
8 requires 24-hour nursing supervision may not be retained in an
9 adult family-care home unless such resident is an enrolled
10 hospice patient and the resident's continued residency is
11 mutually agreeable to the resident and the provider.

12 (g) Procedures for providing notice and assuring the
13 least possible disruption of residents' lives when residents
14 are relocated, an adult family-care home is closed, or the
15 ownership of an adult family-care home is transferred.

16 (h) Procedures to protect the residents' rights as
17 provided in s. 400.628.

18 (i) Procedures to promote the growth of adult
19 family-care homes as a component of a long-term care system.

20 (j) Procedures to promote the goal of aging in place
21 for residents of adult family-care homes.

22 (2) The agency ~~department~~ shall by rule provide
23 minimum standards and procedures for emergencies. Pursuant to
24 s. 633.022, the State Fire Marshal, in consultation with the
25 department and the agency, shall adopt uniform firesafety
26 standards for adult family-care homes.

27 (3) The agency ~~department~~ shall adopt rules providing
28 for the implementation of orders not to resuscitate. The
29 provider may withhold or withdraw cardiopulmonary
30 resuscitation if presented with an order not to resuscitate
31 executed pursuant to s. 401.45. The provider shall not be

1 subject to criminal prosecution or civil liability, nor be
2 considered to have engaged in negligent or unprofessional
3 conduct, for withholding or withdrawing cardiopulmonary
4 resuscitation pursuant to such an order and applicable rules
5 ~~adopted by the department.~~

6 ~~(4) The provider of any adult family-care home that is~~
7 ~~in operation at the time any rules are adopted or amended~~
8 ~~under this part may be given a reasonable time, not exceeding~~
9 ~~6 months, within which to comply with the new or revised rules~~
10 ~~and standards.~~

11 Section 134. Subsection (3) of section 400.6211,
12 Florida Statutes, is amended to read:

13 400.6211 Training and education programs.--

14 (3) Effective January 1, 2004, providers must complete
15 the training and education program within a reasonable time
16 determined by the agency department. Failure to complete the
17 training and education program within the time set by the
18 agency department is a violation of this part and subjects the
19 provider to revocation of the license.

20 Section 135. Section 400.622, Florida Statutes, is
21 repealed.

22 Section 136. Subsection (2) of section 400.625,
23 Florida Statutes, is amended to read:

24 400.625 Residency agreements.--

25 (2) Each residency agreement must specify the personal
26 care and accommodations to be provided by the adult
27 family-care home, the rates or charges, a requirement of at
28 least 30 days' notice before a rate increase, and any other
29 provisions required by rule of the agency department.

30 Section 137. Section 400.801, Florida Statutes, is
31 amended to read:

1 400.801 Homes for special services.--
2 (1) As used in this section, the term:
3 (a) "Agency" means the "Agency for Health Care
4 Administration."
5 (b) "Home for special services" means a site where
6 specialized health care services are provided, including
7 personal and custodial care, but not continuous nursing
8 services.
9 (2) The requirements of part II of chapter 408 apply
10 to the provision of services that necessitate licensure
11 pursuant to this section and part II of chapter 408 and to
12 entities licensed by or applying for such licensure from the
13 Agency for Health Care Administration pursuant to this
14 section. However, an applicant for licensure is exempt from
15 the provisions of s. 408.810(7), (8), (9), and (10).~~A person~~
16 ~~must obtain a license from the agency to operate a home for~~
17 ~~special services. A license is valid for 1 year.~~
18 (3) In accordance with s. 408.805, an applicant or
19 licensee shall pay a fee for each license application
20 submitted under this section and part II of chapter 408. The
21 amount of the fee shall be established by rule and may not be
22 more than \$2,000 per biennium.~~The application for a license~~
23 ~~under this section must be made on a form provided by the~~
24 ~~agency. A nonrefundable license fee of not more than \$1,000~~
25 ~~must be submitted with the license application.~~
26 ~~(4) Each applicant for licensure must comply with the~~
27 ~~following requirements:~~
28 ~~(a) Upon receipt of a completed, signed, and dated~~
29 ~~application, the agency shall require background screening, in~~
30 ~~accordance with the level 2 standards for screening set forth~~
31 ~~in chapter 435, of the managing employee, or other similarly~~

1 ~~titled individual who is responsible for the daily operation~~
2 ~~of the facility, and of the financial officer, or other~~
3 ~~similarly titled individual who is responsible for the~~
4 ~~financial operation of the facility, including billings for~~
5 ~~client care and services, in accordance with the level 2~~
6 ~~standards for screening set forth in chapter 435. The~~
7 ~~applicant must comply with the procedures for level 2~~
8 ~~background screening as set forth in chapter 435.~~

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

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

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

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

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

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

1 ~~director and the not-for-profit corporation or organization~~
2 ~~include in the application a statement affirming that the~~
3 ~~director's relationship to the corporation satisfies the~~
4 ~~requirements of this paragraph.~~

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

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

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

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

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

23 ~~(5) Application for license renewal must be submitted~~
24 ~~90 days before the expiration of the license.~~

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

28 ~~(4)(7)~~ The agency shall adopt rules for
29 implementing and enforcing this section and part II of chapter
30 408.

31

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

4 ~~(b) It is unlawful for any person to offer or~~
5 ~~advertise to the public, in any medium whatever, specialized~~
6 ~~health care services without obtaining a license from the~~
7 ~~agency.~~

8 ~~(c) It is unlawful for a holder of a license issued~~
9 ~~under this section to advertise or represent to the public~~
10 ~~that it holds a license for a type of facility other than the~~
11 ~~facility for which its license is issued.~~

12 ~~(5)(9)(a) In accordance with part II of chapter 408, a~~
13 ~~violation of any provision of this section, part II of chapter~~
14 ~~408, or applicable rules adopted by the agency for~~
15 ~~implementing this section is punishable by payment of an~~
16 ~~administrative fine not to exceed \$5,000.~~

17 ~~(b) A violation of subsection (8) or rules adopted~~
18 ~~under that subsection is a misdemeanor of the first degree,~~
19 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
20 ~~of continuing violation is a separate offense.~~

21 Section 138. Section 400.805, Florida Statutes, is
22 amended to read:

23 400.805 Transitional living facilities.--

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

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

27 (b) "Department" means the Department of Health.

28 (c) "Transitional living facility" means a site where
29 specialized health care services are provided, including, but
30 not limited to, rehabilitative services, community reentry
31 training, aids for independent living, and counseling to

1 spinal-cord-injured persons and head-injured persons. This
2 term does not include a hospital licensed under chapter 395 or
3 any federally operated hospital or facility.

4 (2)(a) The requirements of part II of chapter 408
5 apply to the provision of services that necessitate licensure
6 pursuant to this section and part II of chapter 408 and to
7 entities licensed by or applying for such licensure from the
8 Agency for Health Care Administration pursuant to this
9 section. However, an applicant for licensure is exempt from
10 the provisions of s. 408.810(7), (8), (9), and (10).~~A person~~
11 ~~must obtain a license from the agency to operate a~~
12 ~~transitional living facility. A license issued under this~~
13 ~~section is valid for 1 year.~~

14 (b) In accordance with s. 408.805, an applicant or
15 licensee shall pay a fee for each license application
16 submitted under this section and part II of chapter 408. The
17 fee shall be comprised of a license fee of \$4,000 per biennium
18 and a fee of \$78.50 for each bed per biennium, unless modified
19 by rule.~~The application for a license must be made on a form~~
20 ~~provided by the agency. A nonrefundable license fee of \$2,000~~
21 ~~and a fee of up to \$39.25 per bed must be submitted with the~~
22 ~~license application.~~

23 (c) The agency may not issue a license to an applicant
24 until the agency receives notice from the department as
25 provided in paragraph (6)(b).

26 ~~(3) Each applicant for licensure must comply with the~~
27 ~~following requirements:~~

28 ~~(a) Upon receipt of a completed, signed, and dated~~
29 ~~application, the agency shall require background screening, in~~
30 ~~accordance with the level 2 standards for screening set forth~~
31 ~~in chapter 435, of the managing employee, or other similarly~~

1 ~~titled individual who is responsible for the daily operation~~
2 ~~of the facility, and of the financial officer, or other~~
3 ~~similarly titled individual who is responsible for the~~
4 ~~financial operation of the facility, including billings for~~
5 ~~client care and services. The applicant must comply with the~~
6 ~~procedures for level 2 background screening as set forth in~~
7 ~~chapter 435.~~

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(4) An application for renewal of license must be~~
23 ~~submitted 90 days before the expiration of the license. Upon~~
24 ~~renewal of licensure, each applicant must submit to the~~
25 ~~agency, under penalty of perjury, an affidavit as set forth in~~
26 ~~paragraph (3)(d).~~

27 ~~(5) A change of ownership or control of a transitional~~
28 ~~living facility must be reported to the agency in writing at~~
29 ~~least 60 days before the change is scheduled to take effect.~~

30 (3)(6)(a) The agency shall adopt rules in consultation
31 with the department governing the physical plant of

1 transitional living facilities and the fiscal management of
2 transitional living facilities.

3 (b) The department shall adopt rules in consultation
4 with the agency governing the services provided to clients of
5 transitional living facilities. The department shall enforce
6 all requirements for providing services to the facility's
7 clients. The department must notify the agency when it
8 determines that an applicant for licensure meets the service
9 requirements adopted by the department.

10 (c) The agency and the department shall enforce
11 requirements under this section, as such requirements relate
12 to them respectively, and their respective adopted rules.

13 ~~(7)(a) It is unlawful for any person to establish,~~
14 ~~conduct, manage, or operate a transitional living facility~~
15 ~~without obtaining a license from the agency.~~

16 ~~(b) It is unlawful for any person to offer or~~
17 ~~advertise to the public, in any medium whatever, services or~~
18 ~~care defined in paragraph (1)(c) without obtaining a license~~
19 ~~from the agency.~~

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

24 (4)(8) Any designated officer or employee of the
25 agency, of the state, or of the local fire marshal may enter
26 unannounced upon and into the premises of any facility
27 licensed under this section in order to determine the state of
28 compliance with this section and the rules or standards in
29 force under this section. The right of entry and inspection
30 also extends to any premises that the agency has reason to
31 believe are being operated or maintained as a facility without

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

29 (5)~~(9)~~ The agency may institute injunctive proceedings
30 in a court of competent jurisdiction for temporary or
31 permanent relief to:

1 (a) Enforce this section or any minimum standard,
2 rule, or order issued pursuant thereto if the agency's effort
3 to correct a violation through administrative fines has failed
4 or when the violation materially affects the health, safety,
5 or welfare of residents; or

6 (b) Terminate the operation of a facility if a
7 violation of this section or of any standard or rule adopted
8 pursuant thereto exists which materially affects the health,
9 safety, or welfare of residents.

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

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

25 (6)(11)(a) In accordance with part II of chapter 408,
26 a violation of any provision of this section, part II of
27 chapter 408, or applicable rules adopted by the agency or
28 department under this section is punishable by payment of an
29 administrative or a civil penalty fine not to exceed \$5,000.

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

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

3 Section 139. Subsection (4) of section 400.902,
4 Florida Statutes, is amended to read:

5 400.902 Definitions.--As used in this part, the term:

6 (4) "Owner or operator" means a licensee any
7 ~~individual who has general administrative charge of a PPEC~~
8 ~~center.~~

9 Section 140. Subsection (3) is added to section
10 400.903, Florida Statutes, to read:

11 400.903 PPEC centers to be licensed; exemptions.--

12 (3) The requirements of part II of chapter 408 apply
13 to the provision of services that necessitate licensure
14 pursuant to this part and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to this part.
17 However, an applicant for licensure is exempt from the
18 provisions of s. 408.810(10).

19 Section 141. Section 400.905, Florida Statutes, is
20 amended to read:

21 400.905 License required; fee; exemption; display.--

22 ~~(1)(a) It is unlawful to operate or maintain a PPEC~~
23 ~~center without first obtaining from the agency a license~~
24 ~~authorizing such operation. The agency is responsible for~~
25 ~~licensing PPEC centers in accordance with the provisions of~~
26 ~~this part.~~

27 ~~(b) Any person who violates paragraph (a) is guilty of~~
28 ~~a felony of the third degree, punishable as provided in s.~~
29 ~~775.082, s. 775.083, or s. 775.084.~~

30 (1)(2) Separate licenses are required for PPEC centers
31 maintained on separate premises, even though they are operated

1 under the same management. Separate licenses are not required
2 for separate buildings on the same grounds.

3 ~~(2)(3)~~ In accordance with s. 408.805, an applicant or
4 licensee shall pay a fee for each license application
5 submitted under this part and part II of chapter 408. The
6 amount of the fee shall be established by rule and may not be
7 less than \$1,000 or more than \$3,000 per biennium.~~The annual~~
8 ~~license fee required of a PPEC center shall be in an amount~~
9 ~~determined by the agency to be sufficient to cover the~~
10 ~~agency's costs in carrying out its responsibilities under this~~
11 ~~part, but shall not be less than \$500 or more than \$1,500.~~

12 ~~(3)(4)~~ County-operated or municipally operated PPEC
13 centers applying for licensure under this part are exempt from
14 the payment of license fees.

15 ~~(5)~~ ~~The license shall be displayed in a conspicuous~~
16 ~~place inside the PPEC center.~~

17 ~~(6)~~ ~~A license shall be valid only in the possession of~~
18 ~~the individual, firm, partnership, association, or corporation~~
19 ~~to whom it is issued and shall not be subject to sale,~~
20 ~~assignment, or other transfer, voluntary or involuntary; nor~~
21 ~~shall a license be valid for any premises other than that for~~
22 ~~which originally issued.~~

23 ~~(7)~~ ~~Any license granted by the agency shall state the~~
24 ~~maximum capacity of the facility, the date the license was~~
25 ~~issued, the expiration date of the license, and any other~~
26 ~~information deemed necessary by the agency.~~

27 Section 142. Section 400.906, Florida Statutes, is
28 repealed.

29 Section 143. Section 400.907, Florida Statutes, is
30 amended to read:

31

1 400.907 Denial or, ~~suspension~~, revocation of
2 licensure; administrative fines; grounds.--

3 (1) In accordance with part II of chapter 408, the
4 agency may deny or, ~~revoke, or suspend~~ a license or impose an
5 administrative fine for a violation of any provision of this
6 part, part II of chapter 408, or applicable rules in the
7 ~~manner provided in chapter 120.~~

8 (2) Any of the following actions by a PPEC center ~~or~~
9 ~~its~~ employee is grounds for action by the agency against a
10 PPEC center or its employee:

11 (a) An intentional or negligent act materially
12 affecting the health or safety of children in the PPEC center.

13 (b) A violation of the provisions of this part, part
14 II of chapter 408, or applicable rules ~~or of any standards or~~
15 ~~rules adopted pursuant to this part.~~

16 ~~(c) Multiple and repeated violations of this part or~~
17 ~~of minimum standards or rules adopted pursuant to this part.~~

18 ~~(3) The agency shall be responsible for all~~
19 ~~investigations and inspections conducted pursuant to this~~
20 ~~part.~~

21 Section 144. Section 400.908, Florida Statutes, is
22 amended to read:

23 400.908 Administrative fines; disposition of fees and
24 fines.--

25 (1)(a) If the agency determines that a PPEC center is
26 ~~being operated without a license or is otherwise~~ not in
27 compliance with rules adopted under this part, part II of
28 chapter 408, or applicable rules, the agency, notwithstanding
29 any other administrative action it takes, shall make a
30 reasonable attempt to discuss each violation and recommended
31 corrective action with the owner of the PPEC center prior to

1 written notification thereof. The agency may request that the
2 PPEC center submit a corrective action plan which demonstrates
3 a good faith effort to remedy each violation by a specific
4 date, subject to the approval of the agency.

5 (b) In accordance with part II of chapter 408, the
6 agency may fine a PPEC center or employee found in violation
7 of ~~rules adopted pursuant to this part,~~ part II of chapter
8 408, or applicable rules in an amount not to exceed \$500 for
9 each violation. Such fine may not exceed \$5,000 in the
10 aggregate.

11 (c) The failure to correct a violation by the date set
12 by the agency, or the failure to comply with an approved
13 corrective action plan, is a separate violation for each day
14 such failure continues, unless the agency approves an
15 extension to a specific date.

16 ~~(d) If a PPEC center desires to appeal any agency~~
17 ~~action under this section and the fine is upheld, the violator~~
18 ~~shall pay the fine, plus interest at the legal rate specified~~
19 ~~in s. 687.01, for each day beyond the date set by the agency~~
20 ~~for payment of the fine.~~

21 (2) In determining if a fine is to be imposed and in
22 fixing the amount of any fine, the agency shall consider the
23 following factors:

24 (a) The gravity of the violation, including the
25 probability that death or serious physical or emotional harm
26 to a child will result or has resulted, the severity of the
27 actual or potential harm, and the extent to which the
28 provisions of the applicable statutes or rules were violated.

29 (b) Actions taken by the owner or operator to correct
30 violations.

31 (c) Any previous violations.

1 (d) The financial benefit to the PPEC center of
2 committing or continuing the violation.

3 ~~(3) Fees and fines received by the agency under this~~
4 ~~part shall be deposited in the Health Care Trust Fund created~~
5 ~~in s. 408.16.~~

6 Section 145. Sections 400.910 and 400.911, Florida
7 Statutes, are repealed.

8 Section 146. Section 400.912, Florida Statutes, is
9 amended to read:

10 400.912 Closing of a PPEC center.--

11 ~~(1) Whenever a PPEC center voluntarily discontinues~~
12 ~~operation, it shall inform the agency in writing at least 30~~
13 ~~days before the discontinuance of operation. The PPEC center~~
14 ~~shall also, at such time, inform each child's legal guardian~~
15 ~~of the fact and the proposed time of such discontinuance.~~

16 ~~(2) Immediately upon discontinuance of the operation~~
17 ~~of a PPEC center, the owner or operator shall surrender the~~
18 ~~license therefor to the agency and the license shall be~~
19 ~~canceled.~~

20 Section 147. Section 400.913, Florida Statutes, is
21 repealed.

22 Section 148. Subsection (1) of section 400.914,
23 Florida Statutes, is amended to read:

24 400.914 Rules establishing standards.--

25 (1) Pursuant to the intention of the Legislature to
26 provide safe and sanitary facilities and healthful programs,
27 the agency in conjunction with the Division of Children's
28 Medical Services Prevention and Intervention of the Department
29 of Health shall adopt and publish rules to implement the
30 provisions of this part and part II of chapter 408, which
31 shall include reasonable and fair standards. Any conflict

1 between these standards and those that may be set forth in
2 local, county, or city ordinances shall be resolved in favor
3 of those having statewide effect. Such standards shall relate
4 to:

5 (a) The assurance that PPEC services are family
6 centered and provide individualized medical, developmental,
7 and family training services.

8 (b) The maintenance of PPEC centers, not in conflict
9 with the provisions of chapter 553 and based upon the size of
10 the structure and number of children, relating to plumbing,
11 heating, lighting, ventilation, and other building conditions,
12 including adequate space, which will ensure the health,
13 safety, comfort, and protection from fire of the children
14 served.

15 (c) The appropriate provisions of the most recent
16 edition of the "Life Safety Code" (NFPA-101) shall be applied.

17 (d) The number and qualifications of all personnel who
18 have responsibility for the care of the children served.

19 (e) All sanitary conditions within the PPEC center and
20 its surroundings, including water supply, sewage disposal,
21 food handling, and general hygiene, and maintenance thereof,
22 which will ensure the health and comfort of children served.

23 (f) Programs and basic services promoting and
24 maintaining the health and development of the children served
25 and meeting the training needs of the children's legal
26 guardians.

27 (g) Supportive, contracted, other operational, and
28 transportation services.

29 (h) Maintenance of appropriate medical records, data,
30 and information relative to the children and programs. Such
31

1 records shall be maintained in the facility for inspection by
2 the agency.

3 Section 149. Section 400.915, Florida Statutes, is
4 amended to read:

5 400.915 Construction and renovation;
6 requirements.--The requirements for the construction or
7 renovation of a PPEC center shall comply with:

8 (1) The provisions of chapter 553, which pertain to
9 building construction standards, including plumbing,
10 electrical code, glass, manufactured buildings, accessibility
11 for the physically disabled;

12 (2) The minimum standards for physical facilities in
13 rule 10M-12.003, Florida Administrative Code, Child Care
14 Standards; and

15 (3) The standards or rules adopted pursuant to this
16 part and part II of chapter 408.

17 Section 150. Sections 400.916 and 400.917, Florida
18 Statutes, are repealed.

19 Section 151. Section 400.925, Florida Statutes, is
20 amended to read:

21 400.925 Definitions.--As used in this part, the term:

22 (1) "Accrediting organizations" means the Joint
23 Commission on Accreditation of Healthcare Organizations or
24 other national accreditation agencies whose standards for
25 accreditation are comparable to those required by this part
26 for licensure.

27 ~~(2) "Affiliated person" means any person who directly~~
28 ~~or indirectly manages, controls, or oversees the operation of~~
29 ~~a corporation or other business entity that is a licensee,~~
30 ~~regardless of whether such person is a partner, shareholder,~~
31 ~~owner, officer, director, agent, or employee of the entity.~~

1 (2)~~(3)~~ "Agency" means the Agency for Health Care
2 Administration.

3 ~~(4)~~ "Applicant" means an individual applicant in the
4 case of a sole proprietorship, or any officer, director,
5 agent, managing employee, general manager, or affiliated
6 person, or any partner or shareholder having an ownership
7 interest equal to 5 percent or greater in the corporation,
8 partnership, or other business entity.

9 (3)~~(5)~~ "Consumer" or "patient" means any person who
10 uses home medical equipment in his or her place of residence.

11 (4)~~(6)~~ "Department" means the Department of Children
12 and Family Services.

13 (5)~~(7)~~ "General manager" means the individual who has
14 the general administrative charge of the premises of a
15 licensed home medical equipment provider.

16 (6)~~(8)~~ "Home medical equipment" includes any product
17 as defined by the Federal Drug Administration's Drugs, Devices
18 and Cosmetics Act, any products reimbursed under the Medicare
19 Part B Durable Medical Equipment benefits, or any products
20 reimbursed under the Florida Medicaid durable medical
21 equipment program. Home medical equipment includes oxygen and
22 related respiratory equipment; manual, motorized, or
23 customized wheelchairs and related seating and positioning,
24 but does not include prosthetics or orthotics or any splints,
25 braces, or aids custom fabricated by a licensed health care
26 practitioner; motorized scooters; personal transfer systems;
27 and specialty beds, for use by a person with a medical need.

28 (7)~~(9)~~ "Home medical equipment provider" means any
29 person or entity that sells or rents or offers to sell or rent
30 to or for a consumer:

31 (a) Any home medical equipment and services; or

1 (b) Home medical equipment that requires any home
2 medical equipment services.

3 (8)~~(10)~~ "Home medical equipment provider personnel"
4 means persons who are employed by or under contract with a
5 home medical equipment provider.

6 (9)~~(11)~~ "Home medical equipment services" means
7 equipment management and consumer instruction, including
8 selection, delivery, setup, and maintenance of equipment, and
9 other related services for the use of home medical equipment
10 in the consumer's regular or temporary place of residence.

11 (10)~~(12)~~ "Licensee" means the person or entity to whom
12 a license to operate as a home medical equipment provider is
13 issued by the agency.

14 (11)~~(13)~~ "Moratorium" has the same meaning as in s.
15 408.803, except that ~~means a mandated temporary cessation or~~
16 ~~suspension of the sale, rental, or offering of equipment after~~
17 ~~the imposition of the moratorium.~~services related to
18 equipment sold or rented prior to the moratorium must be
19 continued without interruption, unless deemed otherwise by the
20 agency.

21 (12)~~(14)~~ "Person" means any individual, firm,
22 partnership, corporation, or association.

23 (13)~~(15)~~ "Premises" means those buildings and
24 equipment which are located at the address of the licensed
25 home medical equipment provider for the provision of home
26 medical equipment services, which are in such reasonable
27 proximity as to appear to the public to be a single provider
28 location, and which comply with zoning ordinances.

29 (14)~~(16)~~ "Residence" means the consumer's home or
30 place of residence, which may include nursing homes, assisted
31

1 living facilities, transitional living facilities, adult
2 family-care homes, or other congregate residential facilities.

3 Section 152. Subsection (3) and paragraphs (d) and (e)
4 of subsection (6) of section 400.93, Florida Statutes, are
5 amended to read:

6 400.93 Licensure required; exemptions; unlawful acts;
7 penalties.--

8 (3) The requirements of part II of chapter 408 apply
9 to the provision of services that necessitate licensure
10 pursuant to this part and part II of chapter 408 and to
11 entities licensed by or applying for such licensure from the
12 Agency for Health Care Administration pursuant to this part.

13 However, an applicant for licensure is exempt from the
14 provisions of s. 408.810(8) and (10).~~A home medical equipment~~
15 ~~provider must be licensed by the agency to operate in this~~
16 ~~state or to provide home medical equipment and services to~~
17 ~~consumers in this state. A standard license issued to a home~~
18 ~~medical equipment provider, unless sooner suspended or~~
19 ~~revoked, expires 2 years after its effective date.~~

20 (6)

21 ~~(d) The following penalties shall be imposed for~~
22 ~~operating an unlicensed home medical equipment provider:~~

23 1. ~~Any person or entity who operates an unlicensed~~
24 ~~provider commits a felony of the third degree.~~

25 2. ~~For any person or entity who has received~~
26 ~~government reimbursement for services provided by an~~
27 ~~unlicensed provider, the agency shall make a fraud referral to~~
28 ~~the appropriate government reimbursement program.~~

29 3. ~~For any licensee found to be concurrently operating~~
30 ~~licensed and unlicensed provider premises, the agency may~~
31 ~~impose a fine or moratorium, or revoke existing licenses of~~

1 ~~any or all of the licensee's licensed provider locations until~~
2 ~~such time as the unlicensed provider premises is licensed.~~

3 ~~(e) A provider found to be operating without a license~~
4 ~~may apply for licensure, and must cease operations until a~~
5 ~~license is awarded by the agency.~~

6 Section 153. Section 400.931, Florida Statutes, is
7 amended to read:

8 400.931 Application for license; fee; provisional
9 license; temporary permit.--

10 ~~(1) Application for an initial license or for renewal~~
11 ~~of an existing license must be made under oath to the agency~~
12 ~~on forms furnished by it and must be accompanied by the~~
13 ~~appropriate license fee as provided in subsection (12).~~

14 (1)(2) The applicant must file with the application
15 satisfactory proof that the home medical equipment provider is
16 in compliance with this part and applicable rules, including:

17 (a) A report, by category, of the equipment to be
18 provided, indicating those offered either directly by the
19 applicant or through contractual arrangements with existing
20 providers. Categories of equipment include:

- 21 1. Respiratory modalities.
- 22 2. Ambulation aids.
- 23 3. Mobility aids.
- 24 4. Sickroom setup.
- 25 5. Disposables.

26 (b) A report, by category, of the services to be
27 provided, indicating those offered either directly by the
28 applicant or through contractual arrangements with existing
29 providers. Categories of services include:

- 30 1. Intake.
- 31 2. Equipment selection.

- 1 3. Delivery.
- 2 4. Setup and installation.
- 3 5. Patient training.
- 4 6. Ongoing service and maintenance.
- 5 7. Retrieval.

6 (c) A listing of those with whom the applicant
7 contracts, both the providers the applicant uses to provide
8 equipment or services to its consumers and the providers for
9 whom the applicant provides services or equipment.

10 (2)~~(3)~~ The applicant for initial licensure must
11 demonstrate financial ability to operate, which may be
12 accomplished by the submission of a \$50,000 surety bond to the
13 agency in lieu of the requirements of s. 408.810(8).

14 ~~(4) An applicant for renewal who has demonstrated~~
15 ~~financial inability to operate must demonstrate financial~~
16 ~~ability to operate.~~

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

19 ~~(a) Upon receipt of a completed, signed, and dated~~
20 ~~application, the agency shall require background screening of~~
21 ~~the applicant, in accordance with the level 2 standards for~~
22 ~~screening set forth in chapter 435. As used in this~~
23 ~~subsection, the term "applicant" means the general manager and~~
24 ~~the financial officer or similarly titled individual who is~~
25 ~~responsible for the financial operation of the licensed~~
26 ~~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 licensure requirements of this state is acceptable~~
7 ~~in fulfillment of paragraph (a).~~

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

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

31

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

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

10 ~~(g) The agency may deny or revoke licensure to any~~
11 ~~potential licensee if any applicant:~~

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

16 ~~2. Has had prior Medicaid or Medicare action taken~~
17 ~~against the applicant as set forth in paragraph (d).~~

18 ~~(h) Upon licensure renewal, each applicant must submit~~
19 ~~to the agency, under penalty of perjury, an affidavit of~~
20 ~~compliance with the background screening provisions of this~~
21 ~~section.~~

22 (3)(6) As specified in part II of chapter 408, the
23 home medical equipment provider must also obtain and maintain
24 professional and commercial liability insurance. Proof of
25 liability insurance, as defined in s. 624.605, must be
26 submitted with the application. The agency shall set the
27 required amounts of liability insurance by rule, but the
28 required amount must not be less than \$250,000 per claim. In
29 the case of contracted services, it is required that the
30 contractor have liability insurance not less than \$250,000 per
31 claim.

1 ~~(7) A provisional license shall be issued to an~~
2 ~~approved applicant for initial licensure for a period of 90~~
3 ~~days, during which time a survey must be conducted~~
4 ~~demonstrating substantial compliance with this section. A~~
5 ~~provisional license shall also be issued pending the results~~
6 ~~of an applicant's Federal Bureau of Investigation report of~~
7 ~~background screening confirming that all standards have been~~
8 ~~met. If substantial compliance is demonstrated, a standard~~
9 ~~license shall be issued to expire 2 years after the effective~~
10 ~~date of the provisional license.~~

11 ~~(8) Ninety days before the expiration date, an~~
12 ~~application for license renewal must be submitted to the~~
13 ~~agency under oath on forms furnished by the agency, and a~~
14 ~~license shall be renewed if the applicant has met the~~
15 ~~requirements established under this part and applicable rules.~~
16 ~~The home medical equipment provider must file with the~~
17 ~~application satisfactory proof that it is in compliance with~~
18 ~~this part and applicable rules. The home medical equipment~~
19 ~~provider must submit satisfactory proof of its financial~~
20 ~~ability to comply with the requirements of this part.~~

21 ~~(9) When a change of ownership of a home medical~~
22 ~~equipment provider occurs, the prospective owner must submit~~
23 ~~an initial application for a license at least 15 days before~~
24 ~~the effective date of the change of ownership. An application~~
25 ~~for change of ownership of a license is required when~~
26 ~~ownership, a majority of the ownership, or controlling~~
27 ~~interest of a licensed home medical equipment provider is~~
28 ~~transferred or assigned and when a licensee agrees to~~
29 ~~undertake or provide services to the extent that legal~~
30 ~~liability for operation of the home medical equipment provider~~
31 ~~rests with the licensee. A provisional license shall be issued~~

1 ~~to the new owner for a period of 90 days, during which time~~
2 ~~all required documentation must be submitted and a survey must~~
3 ~~be conducted demonstrating substantial compliance with this~~
4 ~~section. If substantial compliance is demonstrated, a standard~~
5 ~~license shall be issued to expire 2 years after the issuance~~
6 ~~of the provisional license.~~

7 ~~(4)(10)~~ When a change of the general manager of a home
8 medical equipment provider occurs, the licensee must notify
9 the agency of the change within 45 days, ~~thereof and must~~
10 ~~provide evidence of compliance with the background screening~~
11 ~~requirements in subsection (5); except that a general manager~~
12 ~~who has met the standards for the Department of Law~~
13 ~~Enforcement background check, but for whom background~~
14 ~~screening results from the Federal Bureau of Investigation~~
15 ~~have not yet been received, may be employed pending receipt of~~
16 ~~the Federal Bureau of Investigation background screening~~
17 ~~report. An individual may not continue to serve as general~~
18 ~~manager if the Federal Bureau of Investigation background~~
19 ~~screening report indicates any violation of background~~
20 ~~screening standards.~~

21 ~~(5)(11)~~ In accordance with s. 408.805, an applicant or
22 licensee shall pay a fee for each license application
23 submitted under this part and part II of chapter 408. The
24 amount of the fee shall be established by rule and may not
25 exceed \$300 per biennium.~~All licensure fees required of a~~
26 ~~home medical equipment provider are nonrefundable.~~The agency
27 shall set the fees in an amount that is sufficient to cover
28 its costs in carrying out its responsibilities under this
29 part. However, state, county, or municipal governments
30 applying for licenses under this part are exempt from the
31 payment of license fees. ~~All fees collected under this part~~

1 ~~must be deposited in the Health Care Trust Fund for the~~
2 ~~administration of this part.~~

3 ~~(6)(12)~~ An applicant for initial licensure, renewal,
4 or change of ownership shall also pay ~~a license processing fee~~
5 ~~not to exceed \$300, to be paid by all applicants, and an~~
6 ~~inspection fee, not to exceed \$400, which shall~~ to be paid by
7 all applicants except those not subject to licensure
8 inspection by the agency as described in s. 400.933(2).

9 ~~(13)~~ ~~When a change is reported which requires issuance~~
10 ~~of a license, a fee must be assessed. The fee must be based on~~
11 ~~the actual cost of processing and issuing the license.~~

12 ~~(14)~~ ~~When a duplicate license is issued, a fee must be~~
13 ~~assessed, not to exceed the actual cost of duplicating and~~
14 ~~mailing.~~

15 ~~(15)~~ ~~When applications are mailed out upon request, a~~
16 ~~fee must be assessed, not to exceed the cost of the printing,~~
17 ~~preparation, and mailing.~~

18 ~~(16)~~ ~~The license must be displayed in a conspicuous~~
19 ~~place in the administrative office of the home medical~~
20 ~~equipment provider and is valid only while in the possession~~
21 ~~of the person or entity to which it is issued. The license may~~
22 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
23 ~~or involuntarily, and is valid only for the home medical~~
24 ~~equipment provider and location for which originally issued.~~

25 ~~(17)~~ ~~A home medical equipment provider against whom a~~
26 ~~proceeding for revocation or suspension, or for denial of a~~
27 ~~renewal application, is pending at the time of license renewal~~
28 ~~may be issued a provisional license effective until final~~
29 ~~disposition by the agency of such proceedings. If judicial~~
30 ~~relief is sought from the final disposition, the court that~~

31

1 ~~has jurisdiction may issue a temporary permit for the duration~~
2 ~~of the judicial proceeding.~~

3 Section 154. Section 400.932, Florida Statutes, is
4 amended to read:

5 400.932 Administrative penalties; injunctions;
6 emergency orders; moratoriums.--

7 (1) The agency may deny or, ~~revoke, or suspend~~ a
8 license, or impose an administrative fine not to exceed \$5,000
9 per violation, per day, or initiate injunctive proceedings
10 under s. 400.956.

11 (2) Any of the following actions by an employee of a
12 home medical equipment provider ~~or any of its employees~~ is
13 grounds for administrative action or penalties by the agency:

14 (a) Violation of this part or of applicable rules.

15 (b) An intentional, reckless, or negligent act that
16 materially affects the health or safety of a patient.

17 (3) The agency may deny or revoke the license of any
18 applicant that:

19 ~~(a) Made a false representation or omission of any~~
20 ~~material fact in making the application, including the~~
21 ~~submission of an application that conceals the controlling or~~
22 ~~ownership interest or any officer, director, agent, managing~~
23 ~~employee, affiliated person, partner, or shareholder who may~~
24 ~~not be eligible to participate;~~

25 (a)~~(b)~~ Has been previously found by any professional
26 licensing, certifying, or standards board or agency to have
27 violated the standards or conditions relating to licensure or
28 certification or the quality of services provided.

29 "Professional licensing, certifying, or standards board or
30 agency" shall include, but is not limited to, practitioners,
31

1 health care facilities, programs, or services, or residential
2 care, treatment programs, or other human services; or

3 (b)(c) Has been or is currently excluded, suspended,
4 or terminated from, or has involuntarily withdrawn from,
5 participation in Florida's Medicaid program or any other
6 state's Medicaid program, or participation in the Medicare
7 program or any other governmental or private health care or
8 health insurance program.

9 ~~(4) The agency may issue an emergency order~~
10 ~~immediately suspending or revoking a license when it~~
11 ~~determines that any condition within the responsibility of the~~
12 ~~home medical equipment provider presents a clear and present~~
13 ~~danger to public health and safety.~~

14 ~~(5) The agency may impose an immediate moratorium on~~
15 ~~any licensed home medical equipment provider when the agency~~
16 ~~determines that any condition within the responsibility of the~~
17 ~~home medical equipment provider presents a threat to public~~
18 ~~health or safety.~~

19 Section 155. Section 400.933, Florida Statutes, is
20 amended to read:

21 400.933 Licensure inspections and investigations.--

22 ~~(1) The agency shall make or cause to be made such~~
23 ~~inspections and investigations as it considers necessary,~~
24 ~~including:~~

25 ~~(a) Licensure inspections.~~

26 ~~(b) Inspections directed by the federal Health Care~~
27 ~~Financing Administration.~~

28 ~~(c) Licensure complaint investigations, including full~~
29 ~~licensure investigations with a review of all licensure~~
30 ~~standards as outlined in the administrative rules. Complaints~~
31 ~~received by the agency from individuals, organizations, or~~

1 ~~other sources are subject to review and investigation by the~~
2 ~~agency.~~

3 ~~(2)~~ The agency shall accept, in lieu of its own
4 periodic inspections for licensure, submission of the
5 following:

6 (1)~~(a)~~ The survey or inspection of an accrediting
7 organization, provided the accreditation of the licensed home
8 medical equipment provider is not provisional and provided the
9 licensed home medical equipment provider authorizes release
10 of, and the agency receives the report of, the accrediting
11 organization; or

12 (2)~~(b)~~ A copy of a valid medical oxygen retail
13 establishment permit issued by the Department of Health,
14 pursuant to chapter 499.

15 Section 156. Section 400.935, Florida Statutes, is
16 amended to read:

17 400.935 Rules establishing minimum standards.--The
18 agency shall adopt, publish, and enforce rules to implement
19 this part and part II of chapter 408, which must provide
20 reasonable and fair minimum standards relating to:

21 (1) The qualifications and minimum training
22 requirements of all home medical equipment provider personnel.

23 ~~(2) License application and renewal.~~

24 ~~(3) License and inspection fees.~~

25 (2)~~(4)~~ Financial ability to operate.

26 (3)~~(5)~~ The administration of the home medical
27 equipment provider.

28 (4)~~(6)~~ Procedures for maintaining patient records.

29 (5)~~(7)~~ Ensuring that the home medical equipment and
30 services provided by a home medical equipment provider are in
31

1 accordance with the plan of treatment established for each
2 patient, when provided as a part of a plan of treatment.

3 ~~(6)(8)~~ Contractual arrangements for the provision of
4 home medical equipment and services by providers not employed
5 by the home medical equipment provider providing for the
6 consumer's needs.

7 ~~(7)(9)~~ Physical location and zoning requirements.

8 ~~(8)(10)~~ Home medical equipment requiring home medical
9 equipment services.

10 Section 157. Section 400.95, subsection (2) of section
11 400.953, subsection (4) of section 400.955, and section
12 400.956, Florida Statutes, are repealed.

13 Section 158. Subsection (5) of section 400.960,
14 Florida Statutes, is amended to read:

15 400.960 Definitions.--As used in this part, the term:

16 (5) "Client" means any person receiving services in an
17 intermediate care facility for the developmentally disabled
18 ~~determined by the department to be eligible for developmental~~
19 ~~services.~~

20 Section 159. Section 400.962, Florida Statutes, is
21 amended to read:

22 400.962 License required; license application.--

23 (1) The requirements of part II of chapter 408 apply
24 to the provision of services that necessitate licensure
25 pursuant to this part and part II of chapter 408 and to
26 entities licensed by or applying for such licensure from the
27 Agency for Health Care Administration pursuant to this part.
28 However, an applicant for licensure is exempt from s.
29 408.810(7). The licensure fee shall be \$234 per bed unless
30 modified by rule.~~It is unlawful to operate an intermediate~~
31

1 ~~care facility for the developmentally disabled without a~~
2 ~~license.~~

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

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

10 ~~(4) The license must be conspicuously displayed inside~~
11 ~~the facility.~~

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

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

21 ~~(7) The application must be under oath and must~~
22 ~~contain the following:~~

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

1 ~~(b) The name of any person whose name is required on~~
2 ~~the application under paragraph (a) and who owns at least a 10~~
3 ~~percent interest in any professional service, firm,~~
4 ~~association, partnership, or corporation providing goods,~~
5 ~~leases, or services to the facility for which the application~~
6 ~~is made, and the name and address of the professional service,~~
7 ~~firm, association, partnership, or corporation in which such~~
8 ~~interest is held.~~

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

12 ~~(d) The name of the persons under whose management or~~
13 ~~supervision the facility will be operated.~~

14 ~~(e) The total number of beds.~~

15 (3)(8) The applicant must demonstrate that sufficient
16 numbers of staff, qualified by training or experience, will be
17 employed to properly care for the type and number of residents
18 who will reside in the facility.

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

28 ~~(10)(a) Upon receipt of a completed, signed, and dated~~
29 ~~application, the agency shall require background screening of~~
30 ~~the applicant, in accordance with the level 2 standards for~~
31 ~~screening set forth in chapter 435. As used in this~~

1 ~~subsection, the term "applicant" means the facility~~
2 ~~administrator, or similarly titled individual who is~~
3 ~~responsible for the day-to-day operation of the licensed~~
4 ~~facility, and the facility financial officer, or similarly~~
5 ~~titled individual who is responsible for the financial~~
6 ~~operation of the licensed facility.~~

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

13 ~~(c) Proof of compliance with the level 2 background~~
14 ~~screening requirements of chapter 435 which has been submitted~~
15 ~~within the previous 5 years in compliance with any other~~
16 ~~licensure requirements under this chapter satisfies the~~
17 ~~requirements of paragraph (a). Proof of compliance with~~
18 ~~background screening which has been submitted within the~~
19 ~~previous 5 years to fulfill the requirements of the Financial~~
20 ~~Services Commission and the Office of Insurance Regulation~~
21 ~~under chapter 651 as part of an application for a certificate~~
22 ~~of authority to operate a continuing care retirement community~~
23 ~~satisfies the requirements for the Department of Law~~
24 ~~Enforcement and Federal Bureau of Investigation background~~
25 ~~checks.~~

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

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

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

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

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

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

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

18 Section 160. Sections 400.963 and 400.965, Florida
19 Statutes, are repealed.

20 Section 161. Section 400.967, Florida Statutes, is
21 amended to read:

22 400.967 Rules and classification of deficiencies.--

23 (1) It is the intent of the Legislature that rules
24 adopted and enforced under this part and part II of chapter
25 408 include criteria by which a reasonable and consistent
26 quality of resident care may be ensured, the results of such
27 resident care can be demonstrated, and safe and sanitary
28 facilities can be provided.

29 (2) Pursuant to the intention of the Legislature, the
30 agency, in consultation with the Department of Children and
31 Family Services and the Department of Elderly Affairs, shall

1 adopt and enforce rules to administer this part, which shall
2 include reasonable and fair criteria governing:
3 (a) The location and construction of the facility;
4 including fire and life safety, plumbing, heating, cooling,
5 lighting, ventilation, and other housing conditions that will
6 ensure the health, safety, and comfort of residents. The
7 agency shall establish standards for facilities and equipment
8 to increase the extent to which new facilities and a new wing
9 or floor added to an existing facility after July 1, 2000, are
10 structurally capable of serving as shelters only for
11 residents, staff, and families of residents and staff, and
12 equipped to be self-supporting during and immediately
13 following disasters. The Agency for Health Care Administration
14 shall work with facilities licensed under this part and report
15 to the Governor and the Legislature by April 1, 2000, its
16 recommendations for cost-effective renovation standards to be
17 applied to existing facilities. In making such rules, the
18 agency shall be guided by criteria recommended by nationally
19 recognized, reputable professional groups and associations
20 having knowledge concerning such subject matters. The agency
21 shall update or revise such criteria as the need arises. All
22 facilities must comply with those lifesafety code requirements
23 and building code standards applicable at the time of approval
24 of their construction plans. The agency may require
25 alterations to a building if it determines that an existing
26 condition constitutes a distinct hazard to life, health, or
27 safety. The agency shall adopt fair and reasonable rules
28 setting forth conditions under which existing facilities
29 undergoing additions, alterations, conversions, renovations,
30 or repairs are required to comply with the most recent updated
31 or revised standards.

1 (b) The number and qualifications of all personnel,
2 including management, medical nursing, and other personnel,
3 having responsibility for any part of the care given to
4 residents.

5 (c) All sanitary conditions within the facility and
6 its surroundings, including water supply, sewage disposal,
7 food handling, and general hygiene, which will ensure the
8 health and comfort of residents.

9 (d) The equipment essential to the health and welfare
10 of the residents.

11 (e) A uniform accounting system.

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

14 (g) The preparation and annual update of a
15 comprehensive emergency management plan. The agency shall
16 adopt rules establishing minimum criteria for the plan after
17 consultation with the Department of Community Affairs. At a
18 minimum, the rules must provide for plan components that
19 address emergency evacuation transportation; adequate
20 sheltering arrangements; postdisaster activities, including
21 emergency power, food, and water; postdisaster transportation;
22 supplies; staffing; emergency equipment; individual
23 identification of residents and transfer of records; and
24 responding to family inquiries. The comprehensive emergency
25 management plan is subject to review and approval by the local
26 emergency management agency. During its review, the local
27 emergency management agency shall ensure that the following
28 agencies, at a minimum, are given the opportunity to review
29 the plan: the Department of Elderly Affairs, the Department of
30 Children and Family Services, the Agency for Health Care
31 Administration, and the Department of Community Affairs. Also,

1 appropriate volunteer organizations must be given the
2 opportunity to review the plan. The local emergency management
3 agency shall complete its review within 60 days and either
4 approve the plan or advise the facility of necessary
5 revisions.

6 ~~(h) Each licensee shall post its license in a
7 prominent place that is in clear and unobstructed public view
8 at or near the place where residents are being admitted to the
9 facility.~~

10 (3) In accordance with part II of chapter 408, the
11 agency shall adopt rules to provide that, when the criteria
12 established under this part and part II of chapter 408
13 ~~subsection (2)~~ are not met, such deficiencies shall be
14 classified according to the nature of the deficiency. The
15 agency shall indicate the classification on the face of the
16 notice of deficiencies as follows:

17 (a) Class I deficiencies are those which the agency
18 determines present an ~~and~~ imminent danger to the residents or
19 guests of the facility or a substantial probability that death
20 or serious physical harm would result therefrom. The condition
21 or practice constituting a class I violation must be abated or
22 eliminated immediately, unless a fixed period of time, as
23 determined by the agency, is required for correction.
24 Notwithstanding s. 400.121(2), a class I deficiency is subject
25 to a civil penalty in an amount not less than \$5,000 and not
26 exceeding \$10,000 for each deficiency. A fine may be levied
27 notwithstanding the correction of the deficiency.

28 (b) Class II deficiencies are those which the agency
29 determines have a direct or immediate relationship to the
30 health, safety, or security of the facility residents, other
31 than class I deficiencies. A class II deficiency is subject to

1 a civil penalty in an amount not less than \$1,000 and not
2 exceeding \$5,000 for each deficiency. A citation for a class
3 II deficiency shall specify the time within which the
4 deficiency must be corrected. If a class II deficiency is
5 corrected within the time specified, no civil penalty shall be
6 imposed, unless it is a repeated offense.

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

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

20 (4)~~(5)~~ The agency shall approve or disapprove the
21 plans and specifications within 60 days after receipt of the
22 final plans and specifications. The agency may be granted one
23 15-day extension for the review period, if the secretary of
24 the agency so approves. If the agency fails to act within the
25 specified time, it is deemed to have approved the plans and
26 specifications. When the agency disapproves plans and
27 specifications, it must set forth in writing the reasons for
28 disapproval. Conferences and consultations may be provided as
29 necessary.

30 (5)~~(6)~~ The agency may charge an initial fee of \$2,000
31 for review of plans and construction on all projects, no part

1 of which is refundable. The agency may also collect a fee, not
2 to exceed 1 percent of the estimated construction cost or the
3 actual cost of review, whichever is less, for the portion of
4 the review which encompasses initial review through the
5 initial revised construction document review. The agency may
6 collect its actual costs on all subsequent portions of the
7 review and construction inspections. Initial fee payment must
8 accompany the initial submission of plans and specifications.
9 Any subsequent payment that is due is payable upon receipt of
10 the invoice from the agency. Notwithstanding any other
11 provision of law, all money received by the agency under this
12 section shall be deemed to be trust funds, to be held and
13 applied solely for the operations required under this section.

14 Section 162. Section 400.968, Florida Statutes, is
15 amended to read:

16 400.968 Right of entry; ~~protection of health, safety,~~
17 ~~and welfare.~~--

18 ~~(1)~~ Any designated officer or employee of the agency,
19 of the state, or of the local fire marshal may enter
20 unannounced the premises of any facility licensed under this
21 part in order to determine the state of compliance with this
22 part and the rules or standards in force under this part. The
23 right of entry and inspection also extends to any premises
24 that the agency has reason to believe are being operated or
25 maintained as a facility without a license; but such an entry
26 or inspection may not be made without the permission of the
27 owner or person in charge of the facility unless a warrant
28 that authorizes the entry is first obtained from the circuit
29 court. The warrant requirement extends only to a facility that
30 the agency has reason to believe is being operated or
31 maintained as a facility without a license. An application for

1 a license or renewal thereof which is made under this section
2 constitutes permission for, and acquiescence in, any entry or
3 inspection of the premises for which the license is sought, in
4 order to facilitate verification of the information submitted
5 in connection with the application; to discover, investigate,
6 and determine the existence of abuse or neglect; or to elicit,
7 receive, respond to, and resolve complaints. A current valid
8 license constitutes unconditional permission for, and
9 acquiescence in, any entry or inspection of the premises by
10 authorized personnel. The agency retains the right of entry
11 and inspection of facilities that have had a license revoked
12 or suspended within the previous 24 months, to ensure that the
13 facility is not operating unlawfully. However, before the
14 facility is entered, a statement of probable cause must be
15 filed with the director of the agency, who must approve or
16 disapprove the action within 48 hours.

17 ~~(2) The agency may institute injunctive proceedings in~~
18 ~~a court of competent jurisdiction for temporary or permanent~~
19 ~~relief to:~~

20 ~~(a) Enforce this section or any minimum standard,~~
21 ~~rule, or order issued pursuant thereto if the agency's effort~~
22 ~~to correct a violation through administrative fines has failed~~
23 ~~or when the violation materially affects the health, safety,~~
24 ~~or welfare of residents; or~~

25 ~~(b) Terminate the operation of a facility if a~~
26 ~~violation of this section or of any standard or rule adopted~~
27 ~~pursuant thereto exists which materially affects the health,~~
28 ~~safety, or welfare of residents.~~

29

30 ~~The Legislature recognizes that, in some instances, action is~~
31 ~~necessary to protect residents of facilities from immediately~~

1 ~~life-threatening situations. If it appears by competent~~
2 ~~evidence or a sworn, substantiated affidavit that a temporary~~
3 ~~injunction should issue, the court, pending the determination~~
4 ~~on final hearing, shall enjoin operation of the facility.~~

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

13 Section 163. Subsection (1) of section 400.969,
14 Florida Statutes, is amended to read:

15 400.969 Violation of part; penalties.--

16 (1) In accordance with part II of chapter 408, and
17 except as provided in s. 400.967(3), a violation of any
18 provision of this part, part II of chapter 408, or applicable
19 rules adopted by the agency under this part is punishable by
20 payment of an administrative or civil penalty not to exceed
21 \$5,000.

22 Section 164. Section 400.980, Florida Statutes, is
23 amended to read:

24 400.980 Health care services pools.--

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

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

28 (b) "Health care services pool" means any person,
29 firm, corporation, partnership, or association engaged for
30 hire in the business of providing temporary employment in
31 health care facilities, residential facilities, and agencies

1 for licensed, certified, or trained health care personnel
2 including, without limitation, nursing assistants, nurses'
3 aides, and orderlies. However, the term does not include
4 nursing registries, a facility licensed under chapter 400, a
5 health care services pool established within a health care
6 facility to provide services only within the confines of such
7 facility, or any individual contractor directly providing
8 temporary services to a health care facility without use or
9 benefit of a contracting agent.

10 (2) The requirements of part II of chapter 408 apply
11 to the provision of services that necessitate licensure or
12 registration pursuant to this part and part II of chapter 408
13 and to entities registered by or applying for such
14 registration from the Agency for Health Care Administration
15 pursuant to this part; however, an applicant for licensure is
16 exempt from s. 408.810(6)-(10).~~Each person who operates a~~
17 ~~health care services pool must register each separate business~~
18 ~~location with the agency.~~The agency shall adopt rules and
19 provide forms required for such registration and shall impose
20 a registration fee in an amount sufficient to cover the cost
21 of administering this section. In addition, the registrant
22 must provide the agency with any change of information
23 contained on the original registration application within 14
24 days prior to the change. ~~The agency may inspect the offices~~
25 ~~of any health care services pool at any reasonable time for~~
26 ~~the purpose of determining compliance with this section or the~~
27 ~~rules adopted under this section.~~

28 ~~(3) Each application for registration must include:~~
29 ~~(a) The name and address of any person who has an~~
30 ~~ownership interest in the business, and, in the case of a~~
31 ~~corporate owner, copies of the articles of incorporation,~~

1 ~~bylaws, and names and addresses of all officers and directors~~
2 ~~of the corporation.~~

3 ~~(b) Any other information required by the agency.~~

4 ~~(3)(4) Each applicant for registration must comply~~
5 ~~with the following requirements:~~

6 ~~(a) Upon receipt of a completed, signed, and dated~~
7 ~~application, the agency shall require background screening, in~~
8 ~~accordance with the level 1 standards for screening set forth~~
9 ~~in chapter 435, of every individual who will have contact with~~
10 ~~patients. The agency shall require background screening of the~~
11 ~~managing employee or other similarly titled individual who is~~
12 ~~responsible for the operation of the entity, and of the~~
13 ~~financial officer or other similarly titled individual who is~~
14 ~~responsible for the financial operation of the entity,~~
15 ~~including billings for services in accordance with the level 2~~
16 ~~standards for background screening as set forth in chapter~~
17 ~~435.~~

18 ~~(b) The agency may require background screening of any~~
19 ~~other individual who is affiliated with the applicant if the~~
20 ~~agency has a reasonable basis for believing that he or she has~~
21 ~~been convicted of a crime or has committed any other offense~~
22 ~~prohibited under the level 2 standards for screening set forth~~
23 ~~in chapter 435.~~

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

29 ~~(d) A provisional registration may be granted to an~~
30 ~~applicant when each individual required by this section to~~
31 ~~undergo background screening has met the standards for the~~

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

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

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

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

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

19 ~~(h) Failure to provide all required documentation~~
20 ~~within 30 days after a written request from the agency will~~
21 ~~result in denial of the application for registration.~~

22 ~~(i) The agency must take final action on an~~
23 ~~application for registration within 60 days after receipt of~~
24 ~~all required documentation.~~

25 ~~(j) The agency may deny, revoke, or suspend the~~
26 ~~registration of any applicant or registrant who:~~

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

31

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

4 ~~3. Fails to comply with this section or applicable~~
5 ~~rules.~~

6 ~~4. Commits an intentional, reckless, or negligent act~~
7 ~~that materially affects the health or safety of a person~~
8 ~~receiving services.~~

9 (4)~~(5)~~ It is a misdemeanor of the first degree,
10 punishable under s. 775.082 or s. 775.083, for any person
11 willfully, knowingly, or intentionally to:

12 (a) Fail, by false statement, misrepresentation,
13 impersonation, or other fraudulent means, to disclose in any
14 application for voluntary or paid employment a material fact
15 used in making a determination as to an applicant's
16 qualifications to be a contractor under this section;

17 (b) Operate or attempt to operate an entity registered
18 under this part with persons who do not meet the minimum
19 standards of chapter 435 as contained in this section; or

20 (c) Use information from the criminal records obtained
21 under this section for any purpose other than screening an
22 applicant for temporary employment as specified in this
23 section, or release such information to any other person for
24 any purpose other than screening for employment under this
25 section.

26 (5)~~(6)~~ It is a felony of the third degree, punishable
27 under s. 775.082, s. 775.083, or s. 775.084, for any person
28 willfully, knowingly, or intentionally to use information from
29 the juvenile records of a person obtained under this section
30 for any purpose other than screening for employment under this
31 section.

1 ~~(7) It is unlawful for a person to offer or advertise~~
2 ~~services, as defined by rule, to the public without obtaining~~
3 ~~a certificate of registration from the Agency for Health Care~~
4 ~~Administration. It is unlawful for any holder of a certificate~~
5 ~~of registration to advertise or hold out to the public that he~~
6 ~~or she holds a certificate of registration for other than that~~
7 ~~for which he or she actually holds a certificate of~~
8 ~~registration. Any person who violates this subsection is~~
9 ~~subject to injunctive proceedings under s. 400.515.~~

10 ~~(8) Each registration shall be for a period of 2~~
11 ~~years. The application for renewal must be received by the~~
12 ~~agency at least 30 days before the expiration date of the~~
13 ~~registration. An application for a new registration is~~
14 ~~required within 30 days prior to the sale of a controlling~~
15 ~~interest in a health care services pool.~~

16 (6)~~(9)~~ A health care services pool may not require an
17 employee to recruit new employees from persons employed at a
18 health care facility to which the health care services pool
19 employee is assigned. Nor shall a health care facility to
20 which employees of a health care services pool are assigned
21 recruit new employees from the health care services pool.

22 (7)~~(10)~~ A health care services pool shall document
23 that each temporary employee provided to a health care
24 facility has met the licensing, certification, training, or
25 continuing education requirements, as established by the
26 appropriate regulatory agency, for the position in which he or
27 she will be working.

28 (8)~~(11)~~ When referring persons for temporary
29 employment in health care facilities, a health care services
30 pool shall comply with all pertinent state and federal laws,
31 rules, and regulations relating to health, background

1 screening, and other qualifications required of persons
2 working in a facility of that type.

3 (9)~~(12)~~(a) As a condition of registration and prior to
4 the issuance or renewal of a certificate of registration, a
5 health care services pool applicant must prove financial
6 responsibility to pay claims, and costs ancillary thereto,
7 arising out of the rendering of services or failure to render
8 services by the pool or by its employees in the course of
9 their employment with the pool. The agency shall promulgate
10 rules establishing minimum financial responsibility coverage
11 amounts which shall be adequate to pay potential claims and
12 costs ancillary thereto.

13 (b) Each health care services pool shall give written
14 notification to the agency within 20 days after any change in
15 the method of assuring financial responsibility or upon
16 cancellation or nonrenewal of professional liability
17 insurance. Unless the pool demonstrates that it is otherwise
18 in compliance with the requirements of this section, the
19 agency shall suspend the registration of the pool pursuant to
20 ss. 120.569 and 120.57. Any suspension under this section
21 shall remain in effect until the pool demonstrates compliance
22 with the requirements of this section.

23 (c) Proof of financial responsibility must be
24 demonstrated to the satisfaction of the agency, through one of
25 the following methods:

26 1. Establishing and maintaining an escrow account
27 consisting of cash or assets eligible for deposit in
28 accordance with s. 625.52;

29 2. Obtaining and maintaining an unexpired irrevocable
30 letter of credit established pursuant to chapter 675. Such
31 letters of credit shall be nontransferable and nonassignable

1 and shall be issued by any bank or savings association
2 organized and existing under the laws of this state or any
3 bank or savings association organized under the laws of the
4 United States that has its principal place of business in this
5 state or has a branch office which is authorized under the
6 laws of this state or of the United States to receive deposits
7 in this state; or

8 3. Obtaining and maintaining professional liability
9 coverage from one of the following:

10 a. An authorized insurer as defined under s. 624.09;

11 b. An eligible surplus lines insurer as defined under
12 s. 626.918(2);

13 c. A risk retention group or purchasing group as
14 defined under s. 627.942; or

15 d. A plan of self-insurance as provided in s. 627.357.

16 (d) If financial responsibility requirements are met
17 by maintaining an escrow account or letter of credit, as
18 provided in this section, upon the entry of an adverse final
19 judgment arising from a medical malpractice arbitration award
20 from a claim of medical malpractice either in contract or
21 tort, or from noncompliance with the terms of a settlement
22 agreement arising from a claim of medical malpractice either
23 in contract or tort, the financial institution holding the
24 escrow account or the letter of credit shall pay directly to
25 the claimant the entire amount of the judgment together with
26 all accrued interest or the amount maintained in the escrow
27 account or letter of credit as required by this section,
28 whichever is less, within 60 days after the date such judgment
29 became final and subject to execution, unless otherwise
30 mutually agreed to in writing by the parties. If timely
31 payment is not made, the agency shall suspend the registration

1 of the pool pursuant to procedures set forth by the agency
2 through rule. Nothing in this paragraph shall abrogate a
3 judgment debtor's obligation to satisfy the entire amount of
4 any judgment.

5 (e) Each health care services pool carrying
6 claims-made coverage must demonstrate proof of extended
7 reporting coverage through either tail or nose coverage, in
8 the event the policy is canceled, replaced, or not renewed.
9 Such extended coverage shall provide coverage for incidents
10 that occurred during the claims-made policy period but were
11 reported after the policy period.

12 (f) The financial responsibility requirements of this
13 section shall apply to claims for incidents that occur on or
14 after January 1, 1991, or the initial date of registration in
15 this state, whichever is later.

16 (g) Meeting the financial responsibility requirements
17 of this section must be established at the time of issuance or
18 renewal of a certificate of registration.

19 (10)~~(13)~~ The agency shall adopt rules to implement
20 this section and part II of chapter 408, including rules
21 providing for the establishment of:

22 (a) Minimum standards for the operation and
23 administration of health care personnel pools, including
24 procedures for recordkeeping and personnel.

25 (b) In accordance with part II of chapter 408, fines
26 for the violation of this part, part II of chapter 408, or
27 applicable rules ~~section~~ in an amount not to exceed \$2,500 ~~and~~
28 ~~suspension or revocation of registration.~~

29 ~~(c) Disciplinary sanctions for failure to comply with~~
30 ~~this section or the rules adopted under this section.~~

31

1 Section 165. Subsection (2) of section 400.9905,
2 Florida Statutes, is repealed.

3 Section 166. Section 400.991, Florida Statutes, is
4 amended to read:

5 400.991 License requirements; background screenings;
6 prohibitions.--

7 (1) The requirements of part II of chapter 408 apply
8 to the provision of services that necessitate licensure
9 pursuant to this part and part II of chapter 408 and to
10 entities licensed by or applying for such licensure from the
11 Agency for Health Care Administration pursuant to this part;
12 however, an applicant for licensure is exempt from s.
13 408.810(6), (7), and (10).~~Each clinic, as defined in s.~~
14 ~~400.9905, must be licensed and shall at all times maintain a~~
15 ~~valid license with the agency.~~Each clinic location shall be
16 licensed separately regardless of whether the clinic is
17 operated under the same business name or management as another
18 clinic. Mobile clinics must provide to the agency, at least
19 quarterly, their projected street locations to enable the
20 agency to locate and inspect such clinics.

21 (2) The initial clinic license application shall be
22 filed with the agency by all clinics, as defined in s.
23 400.9905, on or before March 1, 2004. ~~A clinic license must be~~
24 ~~renewed biennially.~~

25 (3) Applicants that submit an application on or before
26 March 1, 2004, which meets all requirements for initial
27 licensure as specified in this section shall receive a
28 temporary license until the completion of an initial
29 inspection verifying that the applicant meets all requirements
30 in rules authorized by s. 400.9925. However, a clinic engaged
31 in magnetic resonance imaging services may not receive a

1 temporary license unless it presents evidence satisfactory to
2 the agency that such clinic is making a good faith effort and
3 substantial progress in seeking accreditation required under
4 s. 400.9935.

5 ~~(4) Application for an initial clinic license or for~~
6 ~~renewal of an existing license shall be notarized on forms~~
7 ~~furnished by the agency and must be accompanied by the~~
8 ~~appropriate license fee as provided in s. 400.9925. The agency~~
9 ~~shall take final action on an initial license application~~
10 ~~within 60 days after receipt of all required documentation.~~

11 (4)~~(5)~~ The application shall contain information that
12 includes, but need not be limited to, information pertaining
13 to the name, residence and business address, phone number,
14 social security number, and license number of the medical or
15 clinic director, of the licensed medical providers employed or
16 under contract with the clinic, ~~and of each person who,~~
17 ~~directly or indirectly, owns or controls 5 percent or more of~~
18 ~~an interest in the clinic, or general partners in limited~~
19 ~~liability partnerships.~~

20 (5)~~(6)~~ The applicant must file with the application
21 satisfactory proof that the clinic is in compliance with this
22 part and applicable rules, including:

23 (a) A listing of services to be provided either
24 directly by the applicant or through contractual arrangements
25 with existing providers;

26 (b) The number and discipline of each professional
27 staff member to be employed; and

28 ~~(c) Proof of financial ability to operate. An~~
29 ~~applicant must demonstrate financial ability to operate a~~
30 ~~clinic by submitting a balance sheet and an income and expense~~
31 ~~statement for the first year of operation which provide~~

1 ~~evidence of the applicant's having sufficient assets, credit,~~
2 ~~and projected revenues to cover liabilities and expenses. The~~
3 ~~applicant shall have demonstrated financial ability to operate~~
4 ~~if the applicant's assets, credit, and projected revenues meet~~
5 ~~or exceed projected liabilities and expenses. All documents~~
6 ~~required under this subsection must be prepared in accordance~~
7 ~~with generally accepted accounting principles, may be in a~~
8 ~~compilation form, and the financial statement must be signed~~
9 ~~by a certified public accountant. As an alternative to~~
10 ~~submitting proof of financial ability to operate as required~~
11 ~~in s. 408.810(8) a balance sheet and an income and expense~~
12 ~~statement for the first year of operation, the applicant may~~
13 ~~file a surety bond of at least \$500,000 which guarantees that~~
14 ~~the clinic will act in full conformity with all legal~~
15 ~~requirements for operating a clinic, payable to the agency.~~
16 ~~The agency may adopt rules to specify related requirements for~~
17 ~~such surety bond.~~

18 ~~(6)(7) Each medical provider at the clinic is subject~~
19 ~~to the background screening requirements of s. 408.809. Each~~
20 ~~applicant for licensure shall comply with the following~~
21 ~~requirements:~~

22 ~~(a) As used in this subsection, the term "applicant"~~
23 ~~means individuals owning or controlling, directly or~~
24 ~~indirectly, 5 percent or more of an interest in a clinic; the~~
25 ~~medical or clinic director, or a similarly titled person who~~
26 ~~is responsible for the day-to-day operation of the licensed~~
27 ~~clinic; the financial officer or similarly titled individual~~
28 ~~who is responsible for the financial operation of the clinic;~~
29 ~~and licensed medical providers at the clinic.~~

30 ~~(b) Upon receipt of a completed, signed, and dated~~
31 ~~application, the agency shall require background screening of~~

1 ~~the applicant, in accordance with the level 2 standards for~~
2 ~~screening set forth in chapter 435. Proof of compliance with~~
3 ~~the level 2 background screening requirements of chapter 435~~
4 ~~which has been submitted within the previous 5 years in~~
5 ~~compliance with any other health care licensure requirements~~
6 ~~of this state is acceptable in fulfillment of this paragraph.~~

7 ~~(c) Each applicant must submit to the agency, with the~~
8 ~~application, a description and explanation of any exclusions,~~
9 ~~permanent suspensions, or terminations of an applicant from~~
10 ~~the Medicare or Medicaid programs. Proof of compliance with~~
11 ~~the requirements for disclosure of ownership and control~~
12 ~~interest under the Medicaid or Medicare programs may be~~
13 ~~accepted in lieu of this submission. The description and~~
14 ~~explanation may indicate whether such exclusions, suspensions,~~
15 ~~or terminations were voluntary or not voluntary on the part of~~
16 ~~the applicant.~~

17 ~~(d) A license may not be granted to a clinic if the~~
18 ~~applicant has been found guilty of, regardless of~~
19 ~~adjudication, or has entered a plea of nolo contendere or~~
20 ~~guilty to, any offense prohibited under the level 2 standards~~
21 ~~for screening set forth in chapter 435, or a violation of~~
22 ~~insurance fraud under s. 817.234, within the past 5 years. If~~
23 ~~the applicant has been convicted of an offense prohibited~~
24 ~~under the level 2 standards or insurance fraud in any~~
25 ~~jurisdiction, the applicant must show that his or her civil~~
26 ~~rights have been restored prior to submitting an application.~~

27 ~~(e) The agency may deny or revoke licensure if the~~
28 ~~applicant has falsely represented any material fact or omitted~~
29 ~~any material fact from the application required by this part.~~

30 ~~(8) Requested information omitted from an application~~
31 ~~for licensure, license renewal, or transfer of ownership must~~

1 ~~be filed with the agency within 21 days after receipt of the~~
2 ~~agency's request for omitted information, or the application~~
3 ~~shall be deemed incomplete and shall be withdrawn from further~~
4 ~~consideration.~~

5 ~~(9) The failure to file a timely renewal application~~
6 ~~shall result in a late fee charged to the facility in an~~
7 ~~amount equal to 50 percent of the current license fee.~~

8 Section 167. Section 400.9915, Florida Statutes, is
9 amended to read:

10 400.9915 Clinic inspections; ~~emergency suspension;~~
11 ~~costs.--~~

12 ~~(1) Any authorized officer or employee of the agency~~
13 ~~shall make inspections of the clinic as part of the initial~~
14 ~~license application or renewal application. The application~~
15 ~~for a clinic license issued under this part or for a renewal~~
16 ~~license constitutes permission for an appropriate agency~~
17 ~~inspection to verify the information submitted on or in~~
18 ~~connection with the application or renewal.~~

19 ~~(2) An authorized officer or employee of the agency~~
20 ~~may make unannounced inspections of clinics licensed pursuant~~
21 ~~to this part as are necessary to determine that the clinic is~~
22 ~~in compliance with this part and with applicable rules. A~~
23 ~~licensed clinic shall allow full and complete access to the~~
24 ~~premises and to billing records or information to any~~
25 ~~representative of the agency who makes an inspection to~~
26 ~~determine compliance with this part and with applicable rules.~~

27 (1)~~(3)~~ Failure by a clinic licensed under this part to
28 allow full and complete access to the premises and to billing
29 records or information to any representative of the agency who
30 makes a request to inspect the clinic to determine compliance
31 with this part or failure by a clinic to employ a qualified

1 medical director or clinic director constitutes a ground for
2 an action under s. 408.814 ~~emergency suspension of the license~~
3 ~~by the agency pursuant to s. 120.60(6).~~

4 ~~(2)(4)~~ In addition to any administrative fines
5 imposed, the agency may assess a fee equal to the cost of
6 conducting a complaint investigation.

7 Section 168. Section 400.992, Florida Statutes, is
8 repealed.

9 Section 169. Subsections (1) and (3) of section
10 400.9925, Florida Statutes, are amended to read:

11 400.9925 Rulemaking authority; license fees.--

12 (1) The agency shall adopt rules necessary to
13 administer the clinic administration, regulation, and
14 licensure program, including rules pursuant to part II of
15 chapter 408 establishing the specific licensure requirements,
16 procedures, forms, and fees. It shall adopt rules establishing
17 a procedure for the biennial renewal of licenses. The agency
18 may issue initial licenses for less than the full 2-year
19 period by charging a prorated licensure fee and specifying a
20 different renewal date than would otherwise be required for
21 biennial licensure. The rules shall specify the expiration
22 dates of licenses, the process of tracking compliance with
23 financial responsibility requirements, and any other
24 conditions of renewal required by law or rule.

25 (3) In accordance with s. 408.805, an applicant or
26 licensee shall pay a fee for each license application
27 submitted under this part and part II of chapter 408. The
28 amount of the fee shall be established by rule and may not
29 exceed \$2,000 per biennium.~~License application and renewal~~
30 ~~fees must be reasonably calculated by the agency to cover its~~
31 ~~costs in carrying out its responsibilities under this part,~~

1 ~~including the cost of licensure, inspection, and regulation of~~
2 ~~clinics, and must be of such amount that the total fees~~
3 ~~collected do not exceed the cost of administering and~~
4 ~~enforcing compliance with this part. Clinic licensure fees are~~
5 ~~nonrefundable and may not exceed \$2,000. The agency shall~~
6 ~~adjust the license fee annually by not more than the change in~~
7 ~~the Consumer Price Index based on the 12 months immediately~~
8 ~~preceding the increase. All fees collected under this part~~
9 ~~must be deposited in the Health Care Trust Fund for the~~
10 ~~administration of this part.~~

11 Section 170. Section 400.993, Florida Statutes, is
12 amended to read:

13 400.993 Reporting of unlicensed clinics; ~~penalties;~~
14 ~~finer; verification of licensure status.--~~

15 (1) ~~It is unlawful to own, operate, or maintain a~~
16 ~~clinic without obtaining a license under this part.~~

17 (2) ~~Any person who owns, operates, or maintains an~~
18 ~~unlicensed clinic commits a felony of the third degree,~~
19 ~~punishable as provided in s. 775.082, s. 775.083, or s.~~
20 ~~775.084. Each day of continued operation is a separate~~
21 ~~offense.~~

22 (3) ~~Any person found guilty of violating subsection~~
23 ~~(2) a second or subsequent time commits a felony of the second~~
24 ~~degree, punishable as provided under s. 775.082, s. 775.083,~~
25 ~~or s. 775.084. Each day of continued operation is a separate~~
26 ~~offense.~~

27 (4) ~~Any person who owns, operates, or maintains an~~
28 ~~unlicensed clinic due to a change in this part or a~~
29 ~~modification in agency rules within 6 months after the~~
30 ~~effective date of such change or modification and who, within~~
31 ~~10 working days after receiving notification from the agency,~~

1 ~~fails to cease operation or apply for a license under this~~
2 ~~part commits a felony of the third degree, punishable as~~
3 ~~provided in s. 775.082, s. 775.083, or s. 775.084. Each day of~~
4 ~~continued operation is a separate offense.~~

5 ~~(5) Any clinic that fails to cease operation after~~
6 ~~agency notification may be fined for each day of noncompliance~~
7 ~~pursuant to this part.~~

8 ~~(6) When a person has an interest in more than one~~
9 ~~clinic, and fails to obtain a license for any one of these~~
10 ~~clinics, the agency may revoke the license, impose a~~
11 ~~moratorium, or impose a fine pursuant to this part on any or~~
12 ~~all of the licensed clinics until such time as the unlicensed~~
13 ~~clinic is licensed or ceases operation.~~

14 ~~(7) Any person aware of the operation of an unlicensed~~
15 ~~clinic must report that facility to the agency.~~

16 ~~(8) In addition to the requirements of part II of~~
17 ~~chapter 408,any health care provider who is aware of the~~
18 ~~operation of an unlicensed clinic shall report that facility~~
19 ~~to the agency. Failure to report a clinic that the provider~~
20 ~~knows or has reasonable cause to suspect is unlicensed shall~~
21 ~~be reported to the provider's licensing board.~~

22 ~~(9) The agency may not issue a license to a clinic~~
23 ~~that has any unpaid fines assessed under this part.~~

24 Section 171. Section 400.9935, Florida Statutes, is
25 amended to read:

26 400.9935 Clinic responsibilities.--

27 (1) Each clinic shall appoint a medical director or
28 clinic director who shall agree in writing to accept legal
29 responsibility for the following activities on behalf of the
30 clinic. The medical director or the clinic director shall:

31

1 (a) Have signs identifying the medical director or
2 clinic director posted in a conspicuous location within the
3 clinic readily visible to all patients.

4 (b) Ensure that all practitioners providing health
5 care services or supplies to patients maintain a current
6 active and unencumbered Florida license.

7 (c) Review any patient referral contracts or
8 agreements executed by the clinic.

9 (d) Ensure that all health care practitioners at the
10 clinic have active appropriate certification or licensure for
11 the level of care being provided.

12 (e) Serve as the clinic records owner as defined in s.
13 456.057.

14 (f) Ensure compliance with the recordkeeping, office
15 surgery, and adverse incident reporting requirements of
16 chapter 456, the respective practice acts, and rules adopted
17 under this part and part II of chapter 408.

18 (g) Conduct systematic reviews of clinic billings to
19 ensure that the billings are not fraudulent or unlawful. Upon
20 discovery of an unlawful charge, the medical director or
21 clinic director shall take immediate corrective action.

22 ~~(2) Any business that becomes a clinic after~~
23 ~~commencing operations must, within 5 days after becoming a~~
24 ~~clinic, file a license application under this part and shall~~
25 ~~be subject to all provisions of this part applicable to a~~
26 ~~clinic.~~

27 (2)(3) Any contract to serve as a medical director or
28 a clinic director entered into or renewed by a physician or a
29 licensed health care practitioner in violation of this part is
30 void as contrary to public policy. This subsection shall apply
31

1 to contracts entered into or renewed on or after March 1,
2 2004.

3 (3)~~(4)~~ All charges or reimbursement claims made by or
4 on behalf of a clinic that is required to be licensed under
5 this part, but that is not so licensed, or that is otherwise
6 operating in violation of this part, are unlawful charges, and
7 therefore are noncompensable and unenforceable.

8 (4)~~(5)~~ Any person establishing, operating, or managing
9 an unlicensed clinic otherwise required to be licensed under
10 this part, or any person who knowingly files a false or
11 misleading license application or license renewal application,
12 or false or misleading information related to such application
13 or department rule, commits a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

16 (5)~~(6)~~ Any licensed health care provider who violates
17 this part is subject to discipline in accordance with this
18 chapter and his or her respective practice act.

19 ~~(7) The agency may fine, or suspend or revoke the~~
20 ~~license of, any clinic licensed under this part for operating~~
21 ~~in violation of the requirements of this part or the rules~~
22 ~~adopted by the agency.~~

23 ~~(8) The agency shall investigate allegations of~~
24 ~~noncompliance with this part and the rules adopted under this~~
25 ~~part.~~

26 (6)~~(9)~~ Any person or entity providing health care
27 services which is not a clinic, as defined under s. 400.9905,
28 may voluntarily apply for a certificate of exemption from
29 licensure under its exempt status with the agency on a form
30 that sets forth its name or names and addresses, a statement
31

1 of the reasons why it cannot be defined as a clinic, and other
2 information deemed necessary by the agency.

3 ~~(10) The clinic shall display its license in a~~
4 ~~conspicuous location within the clinic readily visible to all~~
5 ~~patients.~~

6 (7)~~(11)~~(a) Each clinic engaged in magnetic resonance
7 imaging services must be accredited by the Joint Commission on
8 Accreditation of Healthcare Organizations, the American
9 College of Radiology, or the Accreditation Association for
10 Ambulatory Health Care, within 1 year after licensure.

11 However, a clinic may request a single, 6-month extension if
12 it provides evidence to the agency establishing that, for good
13 cause shown, such clinic can not be accredited within 1 year
14 after licensure, and that such accreditation will be completed
15 within the 6-month extension. After obtaining accreditation as
16 required by this subsection, each such clinic must maintain
17 accreditation as a condition of renewal of its license.

18 (b) The agency may disallow the application of any
19 entity formed for the purpose of avoiding compliance with the
20 accreditation provisions of this subsection and whose
21 principals were previously principals of an entity that was
22 unable to meet the accreditation requirements within the
23 specified timeframes. The agency may adopt rules as to the
24 accreditation of magnetic resonance imaging clinics.

25 (8)~~(12)~~ The agency shall give full faith and credit
26 pertaining to any past variance and waiver granted to a
27 magnetic resonance imaging clinic from rule 64-2002, Florida
28 Administrative Code, by the Department of Health, until
29 September 2004. After that date, such clinic must request a
30 variance and waiver from the agency under s. 120.542.

31

1 Section 172. Sections 400.994 and 400.9945, Florida
2 Statutes, are repealed.

3 Section 173. Section 400.995, Florida Statutes, is
4 amended to read:

5 400.995 ~~Agency~~ Administrative fines ~~penalties~~.--

6 (1) The agency may impose administrative penalties
7 against clinics of up to \$5,000 per violation for violations
8 of the requirements of this part. In determining if a penalty
9 is to be imposed and in fixing the amount of the fine, the
10 agency shall consider the following factors:

11 (a) The gravity of the violation, including the
12 probability that death or serious physical or emotional harm
13 to a patient will result or has resulted, the severity of the
14 action or potential harm, and the extent to which the
15 provisions of the applicable laws or rules were violated.

16 (b) Actions taken by the owner, medical director, or
17 clinic director to correct violations.

18 (c) Any previous violations.

19 (d) The financial benefit to the clinic of committing
20 or continuing the violation.

21 ~~(2) Each day of continuing violation after the date~~
22 ~~fixed for termination of the violation, as ordered by the~~
23 ~~agency, constitutes an additional, separate, and distinct~~
24 ~~violation.~~

25 (2)~~(3)~~ Any action taken to correct a violation shall
26 be documented in writing by the owner, medical director, or
27 clinic director of the clinic and verified through followup
28 visits by agency personnel. The agency may impose a fine and,
29 in the case of an owner-operated clinic, revoke or deny a
30 clinic's license when a clinic medical director or clinic
31

1 director fraudulently misrepresents actions taken to correct a
2 violation.

3 ~~(4) For fines that are upheld following administrative~~
4 ~~or judicial review, the violator shall pay the fine, plus~~
5 ~~interest at the rate as specified in s. 55.03, for each day~~
6 ~~beyond the date set by the agency for payment of the fine.~~

7 ~~(5) Any unlicensed clinic that continues to operate~~
8 ~~after agency notification is subject to a \$1,000 fine per day.~~

9 (3)~~(6)~~ Any licensed clinic whose owner, medical
10 director, or clinic director concurrently operates an
11 unlicensed clinic shall be subject to an administrative fine
12 of \$5,000 per day.

13 ~~(7) Any clinic whose owner fails to apply for a~~
14 ~~change of ownership license in accordance with s. 400.992 and~~
15 ~~operates the clinic under the new ownership is subject to a~~
16 ~~fine of \$5,000.~~

17 (4)~~(8)~~ The agency, as an alternative to or in
18 conjunction with an administrative action against a clinic for
19 violations of this part, part II of chapter 408, and adopted
20 rules, shall make a reasonable attempt to discuss each
21 violation and recommended corrective action with the owner,
22 medical director, or clinic director of the clinic, prior to
23 written notification. The agency, instead of fixing a period
24 within which the clinic shall enter into compliance with
25 standards, may request a plan of corrective action from the
26 clinic which demonstrates a good faith effort to remedy each
27 violation by a specific date, subject to the approval of the
28 agency.

29 ~~(9) Administrative fines paid by any clinic under this~~
30 ~~section shall be deposited into the Health Care Trust Fund.~~

31

1 Section 174. Section 408.831, Florida Statutes, is
2 amended to read:

3 408.831 Denial,~~suspension~~,or revocation of a
4 license, registration, certificate, or application.--

5 (1) In addition to any other remedies provided by law,
6 the agency may deny each application or ~~suspend~~or revoke each
7 license, registration, or certificate of entities regulated or
8 licensed by it:

9 (a) If the applicant, licensee, registrant, or
10 certificateholder, or, in the case of a corporation,
11 partnership, or other business entity, if any affiliated
12 business entity,officer, director, agent, or managing
13 employee of that business entity or any affiliated person,
14 partner, or shareholder having an ownership interest equal to
15 5 percent or greater in that business entity, has failed to
16 pay all outstanding fines, liens, or overpayments assessed by
17 final order of the agency or final order of the Centers for
18 Medicare and Medicaid Services, not subject to further appeal,
19 unless a repayment plan is approved by the agency; or

20 (b) For failure to comply with any repayment plan.

21 (2) In reviewing any application requesting a change
22 of ownership or change of the licensee, registrant, or
23 certificateholder, the transferor shall, prior to agency
24 approval of the change, repay or make arrangements to repay
25 any amounts owed to the agency. Should the transferor fail to
26 repay or make arrangements to repay the amounts owed to the
27 agency, the issuance of a license, registration, or
28 certificate to the transferee shall be delayed until repayment
29 or until arrangements for repayment are made.

30 (3) This section provides standards of enforcement
31 applicable to all entities licensed or regulated by the Agency

1 for Health Care Administration. This section controls over any
2 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391,
3 393, 394, 395, 400, 408, 468, 483, ~~and 641~~, and 765 or rules
4 adopted pursuant to those chapters.

5 Section 175. Subsections (9) and (10) of section
6 440.102, Florida Statutes, are amended to read:

7 440.102 Drug-free workplace program requirements.--The
8 following provisions apply to a drug-free workplace program
9 implemented pursuant to law or to rules adopted by the Agency
10 for Health Care Administration:

11 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--

12 (a) The requirements of part II of chapter 408 apply
13 to the provision of services that necessitate licensure
14 pursuant to this section and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to this
17 section.

18 (b)(a) A laboratory may analyze initial or
19 confirmation test specimens only if:

20 1. The laboratory obtains a license under the
21 requirements of part II of chapter 408 and s. 112.0455(17).
22 Each applicant for licensure must comply with all requirements
23 of part II of chapter 408, with the exception of s.
24 408.810(5)-(10).is licensed and approved by the Agency for
25 Health Care Administration using criteria established by the
26 United States Department of Health and Human Services as
27 general guidelines for modeling the state drug-testing program
28 pursuant to this section or the laboratory is certified by the
29 United States Department of Health and Human Services.

30 2. The laboratory has written procedures to ensure the
31 chain of custody.

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

3 a. The use of internal quality controls, including the
4 use of samples of known concentrations which are used to check
5 the performance and calibration of testing equipment, and
6 periodic use of blind samples for overall accuracy.

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

10 c. Security measures implemented by the testing
11 laboratory to preclude adulteration of specimens and drug test
12 results.

13 d. Other necessary and proper actions taken to ensure
14 reliable and accurate drug test results.

15 (c)~~(b)~~ A laboratory shall disclose to the medical
16 review officer a written positive confirmed test result report
17 within 7 working days after receipt of the sample. All
18 laboratory reports of a drug test result must, at a minimum,
19 state:

20 1. The name and address of the laboratory that
21 performed the test and the positive identification of the
22 person tested.

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

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

27 4. The type of tests conducted for both initial tests
28 and confirmation tests and the minimum cutoff levels of the
29 tests.

30
31

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

4
5 A report must not disclose the presence or absence of any drug
6 other than a specific drug and its metabolites listed pursuant
7 to this section.

8 ~~(d)(c)~~ The laboratory shall submit to the Agency for
9 Health Care Administration a monthly report with statistical
10 information regarding the testing of employees and job
11 applicants. The report must include information on the methods
12 of analysis conducted, the drugs tested for, the number of
13 positive and negative results for both initial tests and
14 confirmation tests, and any other information deemed
15 appropriate by the Agency for Health Care Administration. A
16 monthly report must not identify specific employees or job
17 applicants.

18 (10) RULES.--The Agency for Health Care Administration
19 shall adopt rules pursuant to s. 112.0455, part II of chapter
20 408, and criteria established by the United States Department
21 of Health and Human Services as general guidelines for
22 modeling drug-free workplace laboratories ~~the state~~
23 ~~drug-testing program~~, concerning, but not limited to:

24 (a) Standards for licensing drug-testing laboratories
25 and denial ~~suspension~~ and revocation of such licenses.

26 (b) Urine, hair, blood, and other body specimens and
27 minimum specimen amounts that are appropriate for drug
28 testing.

29 (c) Methods of analysis and procedures to ensure
30 reliable drug-testing results, including standards for initial
31 tests and confirmation tests.

1 (d) Minimum cutoff detection levels for each drug or
2 metabolites of such drug for the purposes of determining a
3 positive test result.

4 (e) Chain-of-custody procedures to ensure proper
5 identification, labeling, and handling of specimens tested.

6 (f) Retention, storage, and transportation procedures
7 to ensure reliable results on confirmation tests and retests.

8 Section 176. Subsection (3) is added to section
9 483.035, Florida Statutes, to read:

10 483.035 Clinical laboratories operated by
11 practitioners for exclusive use; licensure and regulation.--

12 (3) The requirements of part II of chapter 408 apply
13 to the provision of services that necessitate licensure
14 pursuant to this part and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to this part;
17 however, an applicant for licensure is exempt from s.
18 408.810(5)-(10).

19 Section 177. Subsection (1) of section 483.051,
20 Florida Statutes, is amended to read:

21 483.051 Powers and duties of the agency.--The agency
22 shall adopt rules to implement this part, which rules must
23 include, but are not limited to, the following:

24 (1) LICENSING; QUALIFICATIONS.--The agency shall
25 provide for biennial licensure of all clinical laboratories
26 meeting the requirements of this part and shall prescribe the
27 qualifications necessary for such licensure. ~~A license issued~~
28 ~~for operating a clinical laboratory, unless sooner suspended~~
29 ~~or revoked, expires on the date set forth by the agency on the~~
30 ~~face of the license.~~

31

1 Section 178. Section 483.061, Florida Statutes, is
2 amended to read:

3 483.061 Inspection of clinical laboratories.--

4 (1) The agency shall ensure that each clinical
5 laboratory subject to this part is inspected either onsite or
6 offsite when deemed necessary by the agency, but at least
7 every 2 years, for the purpose of evaluating the operation,
8 supervision, and procedures of the facility to ensure
9 compliance with this part. Collection stations and branch
10 offices may be inspected either onsite or offsite, when deemed
11 necessary by the agency. ~~The agency may conduct or cause to be~~
12 ~~conducted the following announced or unannounced inspections~~
13 ~~at any reasonable time:~~

14 ~~(a) An inspection conducted at the direction of the~~
15 ~~federal Health Care Financing Administration.~~

16 ~~(b) A licensure inspection.~~

17 ~~(c) A validation inspection.~~

18 ~~(d) A complaint investigation, including a full~~
19 ~~licensure investigation with a review of all licensure~~
20 ~~standards as outlined in rule. Complaints received by the~~
21 ~~agency from individuals, organizations, or other sources are~~
22 ~~subject to review and investigation by the agency. If a~~
23 ~~complaint has been filed against a laboratory or if a~~
24 ~~laboratory has a substantial licensure deficiency, the agency~~
25 ~~may inspect the laboratory annually or as the agency considers~~
26 ~~necessary.~~

27
28 However, for laboratories operated under s. 483.035, biennial
29 licensure inspections shall be scheduled so as to cause the
30 least disruption to the practitioner's scheduled patients.

31

1 ~~(2) The right of entry and inspection is extended to~~
2 ~~any premises that is maintained as a laboratory without a~~
3 ~~license, but such entry or inspection may not be made without~~
4 ~~the permission of the owner or person in charge of the~~
5 ~~laboratory, unless an inspection warrant as defined in s.~~
6 ~~933.20 is first obtained.~~

7 (2)~~(3)~~ The agency may ~~shall~~ inspect an out-of-state
8 clinical laboratory under this section at the expense of the
9 out-of-state clinical laboratory to determine whether the
10 laboratory meets the requirements of this part and part II of
11 chapter 408.

12 (3)~~(4)~~ The agency shall accept, in lieu of its own
13 periodic inspections for licensure, the survey of or
14 inspection by private accrediting organizations that perform
15 inspections of clinical laboratories accredited by such
16 organizations, including postinspection activities required by
17 the agency.

18 (a) The agency shall accept inspections performed by
19 such organizations if the accreditation is not provisional, if
20 such organizations perform postinspection activities required
21 by the agency and provide the agency with all necessary
22 inspection and postinspection reports and information
23 necessary for enforcement, if such organizations apply
24 standards equal to or exceeding standards established and
25 approved by the agency, and if such accrediting organizations
26 are approved by the federal Health Care Financing
27 Administration to perform such inspections.

28 (b) The agency may conduct complaint investigations
29 made against laboratories inspected by accrediting
30 organizations.

31

1 (c) The agency may conduct sample validation
2 inspections of laboratories inspected by accrediting
3 organizations to evaluate the accreditation process used by an
4 accrediting organization.

5 (d) The agency may conduct a full inspection if an
6 accrediting survey has not been conducted within the previous
7 24 months, and the laboratory must pay the appropriate
8 inspection fee under s. 483.172.

9 (e) The agency shall develop, and adopt, by rule,
10 criteria for accepting inspection and postinspection reports
11 of accrediting organizations in lieu of conducting a state
12 licensure inspection.

13 Section 179. Section 483.091, Florida Statutes, is
14 amended to read:

15 483.091 Clinical laboratory license.--~~A person may not~~
16 ~~conduct, maintain, or operate a clinical laboratory in this~~
17 ~~state, except a laboratory that is exempt under s. 483.031,~~
18 ~~unless the clinical laboratory has obtained a license from the~~
19 ~~agency.~~A clinical laboratory may not send a specimen drawn
20 within this state to any clinical laboratory outside the state
21 for examination unless the out-of-state laboratory has
22 obtained a license from the agency. ~~A license is valid only~~
23 ~~for the person or persons to whom it is issued and may not be~~
24 ~~sold, assigned, or transferred, voluntarily or involuntarily,~~
25 ~~and is not valid for any premises other than those for which~~
26 ~~the license is issued. However,~~A new license may be secured
27 for a ~~the~~ new location before the actual change, if the
28 contemplated change complies with this part and the rules
29 adopted under this part. ~~Application for a new clinical~~
30 ~~laboratory license must be made 60 days before a change in the~~
31 ~~ownership of the clinical laboratory.~~

1 Section 180. Section 483.101, Florida Statutes, is
2 amended to read:

3 483.101 Application for clinical laboratory license.--

4 ~~(1) An application for a clinical laboratory license~~
5 ~~must be made under oath by the owner or director of the~~
6 ~~clinical laboratory or by the public official responsible for~~
7 ~~operating a state, municipal, or county clinical laboratory or~~
8 ~~institution that contains a clinical laboratory, upon forms~~
9 ~~provided by the agency.~~

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

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

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

28 ~~(c) Proof of compliance with the level 2 background~~
29 ~~screening requirements of chapter 435 which has been submitted~~
30 ~~within the previous 5 years in compliance with any other~~

31

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

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

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

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

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

26 ~~(h) The agency may deny or revoke licensure if the~~
27 ~~applicant:~~

28 ~~1. Has falsely represented a material fact in the~~
29 ~~application required by paragraph (e) or paragraph (f), or has~~
30 ~~omitted any material fact from the application required by~~
31 ~~paragraph (e) or paragraph (f); or~~

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

4 ~~(i) An application for license renewal must contain~~
5 ~~the information required under paragraphs (e) and (f).~~

6 ~~(3) A license must be issued authorizing the~~
7 ~~performance of one or more clinical laboratory procedures or~~
8 ~~one or more tests on each specialty or subspecialty. A~~
9 ~~separate license is required of all laboratories maintained on~~
10 ~~separate premises even if the laboratories are operated under~~
11 ~~the same management. Upon receipt of a request for an~~
12 ~~application for a clinical laboratory license, the agency~~
13 ~~shall provide to the applicant a copy of the rules relating to~~
14 ~~licensure and operations applicable to the laboratory for~~
15 ~~which licensure is sought.~~

16 Section 181. Section 483.111, Florida Statutes, is
17 amended to read:

18 483.111 Limitations on licensure.--A license may be
19 issued to a clinical laboratory to perform only those clinical
20 laboratory procedures and tests that are within the
21 specialties or subspecialties in which the clinical laboratory
22 personnel are qualified. A license may not be issued unless
23 the agency determines that the clinical laboratory is
24 adequately staffed and equipped to operate in conformity with
25 the requirements of this part, part II of chapter 408, and
26 applicable the rules adopted under this part.

27 Section 182. Section 483.131, Florida Statutes, is
28 repealed.

29 Section 183. Section 483.172, Florida Statutes, is
30 amended to read:

31 483.172 License fees.--

1 (1) In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part and part II of chapter 408. The
4 ~~agency shall collect fees for all licenses issued under this~~
5 ~~part. Each fee is due at the time of application and must be~~
6 ~~payable to the agency to be deposited in the Health Care Trust~~
7 ~~Fund administered by the agency.~~

8 (2) The biennial license fee schedule is as follows,
9 unless modified by rule:

10 (a) If a laboratory performs not more than 2,000 tests
11 annually, the fee is \$400.

12 (b) If a laboratory performs not more than 3
13 categories of procedures with a total annual volume of more
14 than 2,000 but no more than 10,000 tests, the license fee is
15 \$965.

16 (c) If a laboratory performs at least 4 categories of
17 procedures with a total annual volume of not more than 10,000
18 tests, the license fee is \$1,294.

19 (d) If a laboratory performs not more than 3
20 categories of procedures with a total annual volume of more
21 than 10,000 but not more than 25,000 tests, the license fee is
22 \$1,592.

23 (e) If a laboratory performs at least 4 categories of
24 procedures with a total annual volume of more than 10,000 but
25 not more than 25,000 tests, the license fee is \$2,103.

26 (f) If a laboratory performs a total of more than
27 25,000 but not more than 50,000 tests annually, the license
28 fee is \$2,364.

29 (g) If a laboratory performs a total of more than
30 50,000 but not more than 75,000 tests annually, the license
31 fee is \$2,625.

1 (h) If a laboratory performs a total of more than
2 75,000 but not more than 100,000 tests annually, the license
3 fee is \$2,886.

4 (i) If a laboratory performs a total of more than
5 100,000 but not more than 500,000 tests annually, the license
6 fee is \$3,397.

7 (j) If a laboratory performs a total of more than
8 500,000 but not more than 1 million tests annually, the
9 license fee is \$3,658.

10 (k) If a laboratory performs a total of more than 1
11 million tests annually, the license fee is \$3,919.

12 (3) The agency shall assess a biennial fee of \$100 for
13 a certificate of exemption and a \$100 license fee for
14 facilities surveyed by an approved accrediting organization.

15 Section 184. Section 483.201, Florida Statutes, is
16 amended to read:

17 483.201 Grounds for disciplinary action against
18 clinical laboratories.--In addition to the requirements of
19 part II of chapter 408,the following acts constitute grounds
20 for which a disciplinary action specified in s. 483.221 may be
21 taken against a clinical laboratory:

22 ~~(1) Making a fraudulent statement on an application~~
23 ~~for a clinical laboratory license or any other document~~
24 ~~required by the agency.~~

25 (1)(2) Permitting unauthorized persons to perform
26 technical procedures or to issue reports.

27 (2)(3) Demonstrating incompetence or making consistent
28 errors in the performance of clinical laboratory examinations
29 and procedures or erroneous reporting.

30
31

1 (3)~~(4)~~ Performing a test and rendering a report
2 thereon to a person not authorized by law to receive such
3 services.

4 (4)~~(5)~~ Knowingly having professional connection with
5 or knowingly lending the use of the name of the licensed
6 clinical laboratory or its director to an unlicensed clinical
7 laboratory.

8 (5)~~(6)~~ Violating or aiding and abetting in the
9 violation of any provision of this part or the rules adopted
10 under this part.

11 (6)~~(7)~~ Failing to file any report required by the
12 provisions of this part or the rules adopted under this part.

13 (7)~~(8)~~ Reporting a test result for a clinical specimen
14 if the test was not performed on the clinical specimen.

15 (8)~~(9)~~ Performing and reporting tests in a specialty
16 or subspecialty in which the laboratory is not licensed.

17 (9)~~(10)~~ Knowingly advertising false services or
18 credentials.

19 (10)~~(11)~~ Failing to correct deficiencies within the
20 time required by the agency.

21 Section 185. Section 483.221, Florida Statutes, is
22 amended to read:

23 483.221 Administrative fines ~~penalties~~.--

24 (1)~~(a)~~ In accordance with part II of chapter 408, the
25 agency may ~~deny, suspend, revoke, annul, limit, or deny~~
26 ~~renewal of a license or~~ impose an administrative fine, not to
27 exceed \$1,000 per violation, for the violation of any
28 provision of this part or rules adopted under this part. ~~Each~~
29 ~~day of violation constitutes a separate violation and is~~
30 ~~subject to a separate fine.~~

31

1 (2)~~(b)~~ In determining the penalty to be imposed for a
2 violation, as provided in subsection (1)~~paragraph (a)~~, the
3 following factors must be considered:

4 (a)~~1.~~ The severity of the violation, including the
5 probability that death or serious harm to the health or safety
6 of any person will result or has resulted; the severity of the
7 actual or potential harm; and the extent to which the
8 provisions of this part were violated.

9 (b)~~2.~~ Actions taken by the licensee to correct the
10 violation or to remedy complaints.

11 (c)~~3.~~ Any previous violation by the licensee.

12 (d)~~4.~~ The financial benefit to the licensee of
13 committing or continuing the violation.

14 ~~(c) All amounts collected under this section must be~~
15 ~~deposited into the Health Care Trust Fund administered by the~~
16 ~~agency.~~

17 ~~(2) The agency may issue an emergency order~~
18 ~~immediately suspending, revoking, annulling, or limiting a~~
19 ~~license if it determines that any condition in the licensed~~
20 ~~facility presents a clear and present danger to public health~~
21 ~~or safety.~~

22 Section 186. Section 483.23, Florida Statutes, is
23 amended to read:

24 483.23 Offenses; criminal penalties.--

25 (1)(a) It is unlawful for any person to:

26 ~~1. Operate, maintain, direct, or engage in the~~
27 ~~business of operating a clinical laboratory unless she or he~~
28 ~~has obtained a clinical laboratory license from the agency or~~
29 ~~is exempt under s. 483.031.~~

30 1.2. Conduct, maintain, or operate a clinical
31 laboratory, other than an exempt laboratory or a laboratory

1 operated under s. 483.035, unless the clinical laboratory is
2 under the direct and responsible supervision and direction of
3 a person licensed under part III of this chapter.

4 ~~2.3.~~ Allow any person other than an individual
5 licensed under part III of this chapter to perform clinical
6 laboratory procedures, except in the operation of a laboratory
7 exempt under s. 483.031 or a laboratory operated under s.
8 483.035.

9 ~~3.4.~~ Violate or aid and abet in the violation of any
10 provision of this part or the rules adopted under this part.

11 (b) The performance of any act specified in paragraph
12 (a) constitutes a misdemeanor of the second degree, punishable
13 as provided in s. 775.082 or s. 775.083.

14 (2) Any use or attempted use of a forged license under
15 this part or part ~~III~~ IV of this chapter constitutes the crime
16 of forgery.

17 Section 187. Section 483.25, Florida Statutes, is
18 repealed.

19 Section 188. Section 483.291, Florida Statutes, is
20 amended to read:

21 483.291 Powers and duties of the agency; rules.--The
22 agency shall adopt rules to implement this part and part II of
23 chapter 408, which rules must include the following:

24 (1) LICENSING STANDARDS.--The agency ~~shall license all~~
25 ~~multiphasic health testing centers meeting the requirements of~~
26 ~~this part and~~ shall prescribe standards necessary for
27 licensure.

28 (2) FEES.--In accordance with s. 408.805, an applicant
29 or licensee shall pay a fee for each license application
30 submitted under this part and part II of chapter 408. ~~The~~
31 ~~agency shall establish annual fees, which shall be reasonable~~

1 ~~in amount, for licensing of centers. The fees must be~~
2 ~~sufficient in amount to cover the cost of licensing and~~
3 ~~inspecting centers.~~

4 ~~(a) The annual licensure fee is due at the time of~~
5 ~~application and is payable to the agency to be deposited in~~
6 ~~the Health Care Trust Fund administered by the agency. The~~
7 ~~license fee must be not less than~~\$600~~\$300~~ ~~or more than~~
8 ~~\$2,000 per biennium~~\$1,000.

9 ~~(b) The fee for late filing of an application for~~
10 ~~license renewal is \$200 and is in addition to the licensure~~
11 ~~fee due for renewing the license.~~

12 ~~(3) ANNUAL LICENSING.--The agency shall provide for~~
13 ~~annual licensing of centers. Any center that fails to pay the~~
14 ~~proper fee or otherwise fails to qualify by the date of~~
15 ~~expiration of its license is delinquent, and its license is~~
16 ~~automatically canceled without notice or further proceeding.~~
17 ~~Upon cancellation of its license under this subsection, a~~
18 ~~center may have its license reinstated only upon application~~
19 ~~and qualification as provided for initial applicants and upon~~
20 ~~payment of all delinquent fees.~~

21 ~~(3)(4) STANDARDS OF PERFORMANCE.--The agency shall~~
22 ~~prescribe standards for the performance of health testing~~
23 ~~procedures.~~

24 ~~(4)(5) CONSTRUCTION OF CENTERS.--The agency may adopt~~
25 ~~rules to ensure that centers comply with all local, county,~~
26 ~~state, and federal standards for the construction, renovation,~~
27 ~~maintenance, or repair of centers, which standards must ensure~~
28 ~~the conduct and operation of the centers in a manner that will~~
29 ~~protect the public health.~~

30 ~~(5)(6) SAFETY AND SANITARY CONDITIONS WITHIN THE~~
31 ~~CENTER AND ITS SURROUNDINGS.--The agency shall establish~~

1 standards relating to safety and sanitary conditions within
2 the center and its surroundings, including water supply;
3 sewage; the handling of specimens; identification,
4 segregation, and separation of biohazardous waste as required
5 by s. 381.0098; storage of chemicals; workspace; firesafety;
6 and general measures, which standards must ensure the
7 protection of the public health. The agency shall determine
8 compliance by a multiphasic health testing center with the
9 requirements of s. 381.0098 by verifying that the center has
10 obtained all required permits.

11 (6)~~(7)~~ EQUIPMENT.--The agency shall establish minimum
12 standards for center equipment essential to the proper conduct
13 and operation of the center.

14 (7)~~(8)~~ PERSONNEL.--The agency shall prescribe minimum
15 qualifications for center personnel. A center may employ as a
16 medical assistant a person who has at least one of the
17 following qualifications:

18 (a) Prior experience of not less than 6 months as a
19 medical assistant in the office of a licensed medical doctor
20 or osteopathic physician or in a hospital, an ambulatory
21 surgical center, a home health agency, or a health maintenance
22 organization.

23 (b) Certification and registration by the American
24 Medical Technologists Association or other similar
25 professional association approved by the agency.

26 (c) Prior employment as a medical assistant in a
27 licensed center for at least 6 consecutive months at some time
28 during the preceding 2 years.

29 Section 189. Section 483.294, Florida Statutes, is
30 amended to read:

31

1 483.294 Inspection of centers.--The agency shall, at
2 least once annually, inspect the premises and operations of
3 all centers subject to licensure under this part, ~~without~~
4 ~~prior notice to the centers, for the purpose of studying and~~
5 ~~evaluating the operation, supervision, and procedures of such~~
6 ~~facilities, to determine their compliance with agency~~
7 ~~standards and to determine their effect upon the health and~~
8 ~~safety of the people of this state.~~

9 Section 190. Section 483.30, Florida Statutes, is
10 amended to read:

11 483.30 Licensing of centers.--The requirements of part
12 II of chapter 408 apply to the provision of services that
13 necessitate licensure pursuant to this part and part II of
14 chapter 408 and to entities licensed by or applying for such
15 licensure from the Agency for Health Care Administration
16 pursuant to this part; however, an applicant for licensure is
17 exempt from s. 408.810(5)-(10).

18 ~~(1) A person may not conduct, maintain, or operate a~~
19 ~~multiphasic health testing center in this state without~~
20 ~~obtaining a multiphasic health testing center license from the~~
21 ~~agency. The license is valid only for the person or persons~~
22 ~~to whom it is issued and may not be sold, assigned, or~~
23 ~~transferred, voluntarily or involuntarily. A license is not~~
24 ~~valid for any premises other than the center for which it is~~
25 ~~issued. However, a new license may be secured for the new~~
26 ~~location for a fixed center before the actual change, if the~~
27 ~~contemplated change is in compliance with this part and the~~
28 ~~rules adopted under this part. A center must be relicensed if~~
29 ~~a change of ownership occurs. Application for relicensure~~
30 ~~must be made 60 days before the change of ownership.~~

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Section 191. Section 483.302, Florida Statutes, is
28 amended to read:

29 483.302 Application for license.--
30
31

1 ~~(1) Application for a license as required by s. 483.30~~
2 ~~must be made to the agency on forms furnished by it and must~~
3 ~~be accompanied by the appropriate license fee.~~

4 ~~(2) The application for a license must~~ shall contain:

5 (1)(a) A determination as to whether the facility will
6 be fixed or mobile and the location for a fixed facility.

7 ~~(b) The name and address of the owner if an~~
8 ~~individual; if the owner is a firm, partnership, or~~
9 ~~association, the name and address of every member thereof; if~~
10 ~~the owner is a corporation, its name and address and the name~~
11 ~~and address of its medical director and officers and of each~~
12 ~~person having at least a 10 percent interest in the~~
13 ~~corporation.~~

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

22 ~~(d) The name by which the facility is to be known.~~

23 (3)(e) The name, address, and Florida physician's
24 license number of the medical director.

25 Section 192. Section 483.311 and subsection (1) of
26 section 483.317, Florida Statutes, are repealed.

27 Section 193. Section 483.32, Florida Statutes, is
28 amended to read:

29 483.32 Administrative fines penalties.--

30 ~~(1)(a) The agency may deny, suspend, revoke, annul,~~
31 ~~limit, or deny renewal of a license or impose an~~

1 administrative fine, not to exceed \$500 per violation, for the
2 violation of any provision of this part, part II of chapter
3 408, or applicable rules adopted under this part. ~~Each day of~~
4 ~~violation constitutes a separate violation and is subject to a~~
5 ~~separate fine.~~

6 (2)(b) In determining the amount of the fine to be
7 levied for a violation, as provided in paragraph (a), the
8 following factors shall be considered:

9 (a)1. The severity of the violation, including the
10 probability that death or serious harm to the health or safety
11 of any person will result or has resulted; the severity of the
12 actual or potential harm; and the extent to which the
13 provisions of this part were violated.

14 (b)2. Actions taken by the licensee to correct the
15 violation or to remedy complaints.

16 (c)3. Any previous violation by the licensee.

17 (d)4. The financial benefit to the licensee of
18 committing or continuing the violation.

19 ~~(c) All amounts collected under this section must be~~
20 ~~deposited into the Health Care Trust Fund administered by the~~
21 ~~agency.~~

22 ~~(2) The agency may issue an emergency order~~
23 ~~immediately suspending, revoking, annulling, or limiting a~~
24 ~~license when it determines that any condition in the licensed~~
25 ~~facility presents a clear and present danger to public health~~
26 ~~and safety.~~

27 Section 194. Subsection (1) of section 483.322 and
28 section 483.328, Florida Statutes, are repealed.

29 Section 195. In the case of a conflict between the
30 provisions of part II of chapter 408, Florida Statutes, and
31 the authorizing statutes governing the licensure of health

1 care providers by the Agency for Health Care Administration,
2 found in chapter 112, chapter 383, chapter 390, chapter 394,
3 chapter 395, chapter 400, chapter 440, or chapter 483, Florida
4 Statutes, the provisions of part II of chapter 408, Florida
5 Statutes, shall prevail.

6 Section 196. Between October 1, 2004, and September
7 30, 2005, the Agency for Health Care Administration may issue
8 any license for less than a 2-year period by charging a
9 prorated licensure fee and specifying a different renewal date
10 than the date that would otherwise be required for biennial
11 licensure.

12 Section 197. This act shall take effect October 1,
13 2004.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 1680

18 The committee substitute divides ch. 408, F.S., into four
19 parts and consolidates core licensure requirements for
20 facilities licensed by the Agency for Health Care
21 Administration in part II of ch. 408, F.S. The bill
22 establishes exemptions from certain aspects of the core
23 licensure requirements in part II of ch. 408, F.S., for
24 specified providers. The bill permits hospitals to use the
25 services of, rather than to hire, a risk manager and removes
26 the limitation on the number of ambulatory surgical centers
27 and mobile surgical facilities a risk manager could serve.
28
29
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31