

By the Committees on Finance and Taxation; Health, Aging, and Long-Term Care; and Senator Saunders

314-2256-04

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

31

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;

30
31

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 board member of
27 a 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 board member and the not-for-profit
3 corporation or organization which affirms that the board
4 member conforms to this definition. The statement affirming
5 the status of the board member must be submitted to the agency
6 on a form provided by 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 satisfactory inspection results,
20 under this part and authorizing statutes, as specified in
21 rule.

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

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

29 (c) For any other application or request, the
30 applicant must submit an application or request that must be
31 received by the agency at least 60 days prior to the requested

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. Failure to
21 apply for the renewal of a license prior to the expiration
22 date renders the license null and void and the former licensee
23 may not be issued a new license unless the licensee reapplies
24 for an initial license and meets all current qualifications
25 for licensure, including construction standards for facilities
26 where applicable and complies with certificate-of-need
27 requirements if the applicant is subject to the provisions of
28 ss. 408.031-408.045.

29 (6) The failure to file a timely application and
30 license fee shall result in a late fee charged to the licensee
31 in an amount equal to 50 percent of the licensure fee. If a

1 renewal application is not received by the agency 60 days in
2 advance of the license expiration date, the agency shall
3 notify the licensee of this late fee within 10 days after the
4 date the renewal application was due.

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

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

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

18 (b) If an inspection is required by the authorizing
19 statute for a license application other than an initial
20 application, the inspection must be unannounced. This
21 paragraph does not apply to inspections required pursuant to
22 ss. 483.061(2), 395.0161(4), and 383.324(3).

23 (c) If a provider is not available when an inspection
24 is attempted, the application shall be withdrawn from further
25 consideration.

26 (10) The agency may establish procedures for the
27 electronic submission of required information, including, but
28 not limited to:

29 (a) Licensure applications and required signatures.

30 (b) Payment of fees.

31 (c) Notarization of applications.

1
2 Requirements for electronic submission of any documents
3 required by this part or authorizing statutes may be
4 established by rule.

5 408.807 Change of ownership.--Whenever a change of
6 ownership occurs:

7 (1) The transferor shall notify the agency in writing
8 at least 60 days before the anticipated date of transfer of
9 ownership.

10 (2) The transferee shall make application to the
11 agency for a license within the timeframes required in s.
12 408.806.

13 (3) The transferor shall be responsible and liable
14 for:

15 (a) The lawful operation of the provider and the
16 welfare of the clients served until the date the transferee is
17 licensed by the agency.

18 (b) Any and all penalties imposed against the
19 transferor for violations occurring before the date of change
20 of ownership.

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

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

27 (a) All client records.

28 (b) Inspection reports.

29 (c) All records required to be maintained pursuant to
30 409.913, if applicable.

31 408.808 License categories.--

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

7 (2) PROVISIONAL LICENSE.--A provisional license may be
8 issued:

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

10 (b) When a denial or revocation proceeding is pending,
11 a provisional license for this purpose is effective until
12 final agency disposition of the proceeding.

13 (3) INACTIVE LICENSE.--An inactive license may be
14 issued to a health care provider subject to the
15 certificate-of-need provisions in ss. 408.031-408.045 when the
16 provider is currently licensed, does not have a provisional
17 license, and will be temporarily unable to provide services
18 but is reasonably expected to resume services within 12
19 months. Such designation may be made for a period not to
20 exceed 12 months but may be renewed by the agency for up to 6
21 additional months upon demonstration by the licensee of the
22 provider's progress toward reopening. Any request by a
23 licensee for an inactive license or to extend the previously
24 approved inactive period must be submitted to the agency,
25 accompanied by written justification for the inactive license
26 with the beginning and ending dates of inactivity, including a
27 plan for the transfer of any clients to other providers, and
28 the appropriate licensure fees. The agency may not accept a
29 request that is submitted after initiating closure, after any
30 suspension of service, or after notifying clients of closure
31 or suspension of service. Upon agency approval, the provider

1 shall notify clients of any necessary discharge or transfer as
2 required by authorizing statutes. The beginning of the
3 inactive license shall be the date the provider ceases
4 operations. The end of the inactive period shall become the
5 license expiration date and all licensure fees must be
6 current, paid in full, and may be prorated. Reactivation of an
7 inactive license requires the approval of a renewal
8 application, including payment of licensure fees and agency
9 inspections indicating compliance with all requirements of
10 this part, authorizing statutes, and applicable rules.

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

13 408.809 Background screening; prohibited offenses.--

14 (1) Level 2 background screening pursuant to chapter
15 435 must be conducted through the agency on each of the
16 following persons, who shall be considered an employee for the
17 purposes of conducting screening under chapter 435:

18 (a) The licensee if an individual;

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

21 (c) The financial officer or similarly titled
22 individual who is responsible for the financial operation of
23 the licensee or provider; and

24 (d) Any person who is a controlling interest if the
25 agency has reason to believe that such person has been
26 convicted of any offense prohibited by s. 435.04. For each
27 controlling interest who has been convicted of any such
28 offense, the licensee shall submit to the agency a description
29 and explanation of the conviction at the time of license
30 application.

31

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

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

1 screening standards and a disqualification exemption has not
2 been requested of or granted by the agency as set forth in
3 chapter 435.

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

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

20 408.810 Minimum licensure requirements.--In addition
21 to the licensure requirements specified in this part, chapter
22 112, chapter 383, chapter 390, chapter 394, chapter 395,
23 chapter 400, chapter 440, or chapter 483, each applicant for
24 licensure by the Agency for Health Care Administration must
25 comply with the requirements of this section in order to
26 obtain and maintain a license.

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

29 (2) An applicant for licensure must provide a
30 description and explanation of any exclusions, suspensions, or
31 terminations of the applicant from the Medicare, Medicaid, or

1 federal Clinical Laboratory Improvement Amendments (CLIA)
2 programs.

3 (3) Unless otherwise specified in this part,
4 authorizing statutes, or applicable rules, any information
5 required to be reported to the agency must be submitted within
6 10 calendar days after the report period or effective date of
7 the information.

8 (4) Whenever a licensee discontinues operation of a
9 provider:

10 (a) The licensee must inform the agency not less than
11 30 days prior to the discontinuance of operation and inform
12 clients of discharge as required by authorizing statutes.
13 Immediately upon discontinuance of operation of a provider,
14 the licensee shall surrender the license to the agency and the
15 license shall be canceled.

16 (b) Upon closure of a provider, the licensee shall
17 remain responsible for retaining and appropriately
18 distributing all records within the timeframes prescribed in
19 authorizing statutes and applicable rules. In addition, the
20 licensee or, in the event of death or dissolution of a
21 licensee, the estate or agent of the licensee shall:

22 1. Make arrangements to forward records for each
23 client to one of the following, based upon the client's
24 choice: the client or the client's legal representative, the
25 client's attending physician, or the health care provider
26 where the client currently receives services; or

27 2. Cause a notice to be published in the newspaper of
28 greatest general circulation in the county where the provider
29 was located which advises clients of the discontinuance of the
30 provider operation. The notice must inform clients that they
31 may obtain copies of their records and specify the name,

1 address, and telephone number of the person from whom the
2 copies of records may be obtained. The notice must appear at
3 least once a week for 4 consecutive weeks.

4
5 Failure to comply with this paragraph is a misdemeanor of the
6 second degree, punishable as provided in s. 775.083.

7 (5)(a) On or before the first day services are
8 provided to a client, a licensee must inform the client and
9 his or her immediate family or representative, if appropriate,
10 of the right to report:

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

16 2. Abusive, neglectful, or exploitative practices. The
17 statewide toll-free telephone number for the central abuse
18 hotline must be provided to clients in a manner that is
19 clearly legible and must include the words: "To report abuse,
20 neglect, or exploitation, please call toll-free (phone
21 number)."

22
23 The agency shall publish a minimum of a 90-day advance notice
24 of a change in the toll-free telephone numbers.

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

27 (6) An applicant must provide the agency with proof of
28 the applicant's legal right to occupy the property before a
29 license may be issued. Proof may include, but need not be
30 limited to, copies of warranty deeds, lease or rental

31

1 agreements, contracts for deeds, quitclaim deeds, or other
2 such documentation.

3 (7) An applicant shall provide proof of liability
4 insurance as defined in chapter 624, unless defined otherwise
5 in authorizing statute.

6 (8) Upon application for initial licensure or
7 change-of-ownership licensure, the applicant shall furnish
8 satisfactory proof of the applicant's financial ability to
9 operate in accordance with the requirements of this part,
10 authorizing statutes, and applicable rules. The agency shall
11 establish standards for this purpose, including information
12 concerning the applicant's controlling interests. The agency
13 also shall establish documentation requirements, to be
14 completed by each applicant, that show anticipated provider
15 revenues and expenditures, the basis for financing the
16 anticipated cash-flow requirements of the provider, and an
17 applicant's access to contingency financing. A current
18 certificate of authority, pursuant to chapter 651, may be
19 provided as proof of financial ability to operate. The agency
20 may require a licensee to provide proof of financial ability
21 to operate at any time if there is evidence of financial
22 instability, including, but not limited to, unpaid expenses
23 necessary for the basic operations of the provider.

24 (9) A licensee or controlling interest may not
25 withhold from the agency any evidence of financial
26 instability, including, but not limited to, checks returned
27 due to insufficient funds, delinquent accounts, nonpayment of
28 withholding taxes, unpaid utility expenses, nonpayment for
29 essential services, or adverse court action concerning the
30 financial viability of the provider or any other provider
31 licensed under this part which is under the control of the

1 licensee. Any person found guilty of violating this subsection
2 commits a misdemeanor of the second degree, punishable as
3 provided in s. 775.083. Each day of continuing violation is a
4 separate offense.

5 (10) The agency may not issue a license to a health
6 care provider subject to the certificate of need provisions in
7 ss. 408.031-408.045 if the licensee has not been issued a
8 certificate of need or an exemption. Upon initial licensure of
9 any such provider, the authorization contained in the
10 certificate of need shall be considered fully implemented and
11 merged into the license, and shall have no force and effect
12 upon termination of the license for any reason.

13 408.811 Right of inspection; copies; inspection
14 reports.--

15 (1) An authorized officer or employee of the agency
16 may make or cause to be made any inspections and
17 investigations as the agency deems necessary to determine the
18 state of compliance with this part, authorizing statutes, and
19 applicable rules. The right of inspection extends to any
20 business that the agency has reason to believe is being
21 operated as a provider without a license, but inspection of
22 any business suspected of being operated without the
23 appropriate license may not be made without the permission of
24 the owner or person in charge unless a warrant is first
25 obtained from a circuit court. Any application for a license
26 issued under this part, authorizing statutes, or applicable
27 rules constitutes permission for an appropriate inspection to
28 verify the information submitted on or in connection with the
29 application.

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

1 (b) Inspections for relicensure shall be conducted
2 biennially unless otherwise specified by authorizing statutes
3 or applicable rules.

4 (2) Inspections conducted in conjunction with
5 certification may be accepted in lieu of a complete licensure
6 inspection. However, a licensure inspection may also be
7 conducted to review any licensure requirements that are not
8 also requirements of certification.

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

12 (4)(a) Each licensee shall maintain as public
13 information, available upon request, records of all inspection
14 reports pertaining to that provider which have been filed
15 with, or issued by, any governmental agency unless those
16 reports are exempt from, or contain information that is exempt
17 from, s. 119.07(1), or is otherwise made confidential by law.
18 Effective July 1, 2004, copies of such reports shall be
19 retained in the records of the provider for at least 5 years
20 following the date the reports are filed and issued,
21 regardless of a change of ownership.

22 (b) A licensee shall, upon the request of any person
23 who has completed a written application with intent to be
24 admitted by such provider or any person who is a patient of
25 such provider, or any relative, spouse, or guardian of any
26 such person, furnish to the requester a copy of the last
27 inspection report pertaining to the licensed provider which
28 was issued by the agency or by an accrediting organization if
29 such report is used in lieu of a licensure inspection.

30 408.812 Unlicensed activity.--
31

1 (1) A person may not offer or advertise to the public
2 services as defined by this part, authorizing statutes, or
3 application rules without obtaining a valid license from the
4 Agency for Health Care Administration. The holder of a license
5 may not advertise or hold out to the public that he or she
6 holds a license for other than that for which he or she
7 actually holds a license.

8 (2) The operation or maintenance of an unlicensed
9 provider or the performance of any services that necessitate
10 licensure without such licensure is a violation of this part
11 and authorizing statutes. Unlicensed activity constitutes harm
12 that materially affects the health, safety, and welfare of
13 clients. The agency, or any state attorney, may, in addition
14 to other remedies provided in this part, bring an action for
15 an injunction to restrain such violation, or to enjoin the
16 future operation or maintenance of any such provider or the
17 provision of services that necessitate licensure in violation
18 of this part and authorizing statutes, until compliance with
19 this part, authorizing statutes, and agency rules has been
20 demonstrated to the satisfaction of the agency.

21 (3) Any person who owns, operates, or maintains an
22 unlicensed provider and who, after receiving notification from
23 the agency, fails to cease operation and apply for a license
24 under this part and authorizing statutes commits a felony of
25 the third degree, punishable as provided in s. 775.082, s.
26 775.083, or s. 775.084. Each day of continued operation is a
27 separate offense.

28 (4) Any person found guilty of violating subsection
29 (3) a second or subsequent time commits a felony of the second
30 degree, punishable as provided under s. 775.082, s. 775.083,
31

1 or s. 775.084. Each day of continued operation is a separate
2 offense.

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

6 (6) When a licensee has an interest in more than one
7 provider and fails to license any provider rendering services
8 that necessitate licensure, the agency may revoke all
9 licenses, impose actions under s. 408.814, or impose a fine of
10 \$1,000 unless otherwise specified by authorizing statutes
11 against the licensee until such time as the licensee becomes
12 appropriately licensed.

13 (7) In addition to injunctive relief pursuant to
14 subsection (2), if the agency determines that an owner is
15 operating or maintaining a provider without obtaining a
16 license and determines that a condition exists that poses a
17 threat to the health, safety, or welfare of a client of the
18 provider, the owner is subject to the same actions and fines
19 imposed against a licensed provider as specified in this part,
20 the authorizing statute, and agency rules.

21 (8) Any person aware of the operation of an unlicensed
22 provider must report that provider and operation to the
23 agency.

24 408.813 Administrative fines.--As a penalty for any
25 violation of this part, authorizing statutes, or applicable
26 rules, the agency may impose an administrative fine. Unless
27 the amount of the fine is prescribed by authorizing statutes
28 or applicable rules, the agency may establish criteria for the
29 amount of administrative fines applicable to this part,
30 authorizing statutes, and applicable rules. Each day of
31 violation constitutes a separate violation and is subject to a

1 separate fine. For fines that are upheld following
2 administrative or judicial review, the violator shall pay the
3 fine, plus interest at the rate as specified in s. 55.03 for
4 each day beyond the date set by the agency for payment of the
5 fine.

6 408.814 Moratoriums; emergency suspensions.--

7 (1) The agency may impose an immediate moratorium or
8 emergency suspension as defined in s. 120.60 on any provider
9 if the agency determines that any condition related to the
10 provider presents a threat to the health, safety, or welfare
11 of the clients.

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

16 (3) A moratorium or emergency suspension remains in
17 effect after a change of ownership, unless the agency has
18 determined that the conditions that created the moratorium,
19 emergency suspension, or denial of licensure have been
20 corrected.

21 (4) When a moratorium or emergency suspension is
22 placed on a provider, notice of the action shall be posted and
23 visible to the public at the location of the provider until
24 the action is lifted.

25 (5) Moratoria and emergency suspensions are specific
26 to the facts of each case, not of general applicability,
27 therefore not subject to rulemaking under chapter 120.

28 408.815 License denial; revocation.--

29 (1) In addition to grounds in authorizing statutes,
30 grounds for denying or revoking a license or application
31

1 include any of the following actions by a controlling
2 interest:
3 (a) False representation of a material fact in the
4 license application or omission of any material fact from the
5 application.
6 (b) An intentional or negligent act materially
7 affecting the health or safety of clients of the provider.
8 (c) A violation of this part, authorizing statutes, or
9 applicable rules.
10 (d) A demonstrated pattern of deficient performance.
11 (e) The applicant, licensee, or controlling interest
12 has been or is currently excluded, suspended, terminated from,
13 or has involuntarily withdrawn from participation in the state
14 Medicaid program, the Medicaid program of any other state, or
15 the Medicare program or any other governmental or private
16 health care or health insurance program.
17 (2) If a licensee lawfully continues to operate while
18 a denial or revocation is pending in litigation, the licensee
19 must continue to meet all other requirements of this part,
20 authorizing statutes, and applicable rules, and must file
21 subsequent renewal applications for licensure, including
22 licensure fees. Notwithstanding chapter 120, the agency may
23 withhold a final decision on any application or request filed
24 during this period until final agency action in pending
25 litigation.
26 (3) An action under s. 408.814, or denial of the
27 license of the transferor, may be grounds for denial of a
28 change-of-ownership application of the transferee.
29 408.816 Injunctions.--
30 (1) In addition to the other powers provided by this
31 part and authorizing statutes, the agency may:

1 (a) Institute injunction proceedings in a court of
2 competent jurisdiction to restrain or prevent the
3 establishment or operation of a provider that does not have a
4 license or is in violation of any provision of this part,
5 authorizing statutes, or applicable rules. The agency may also
6 institute injunction proceedings in a court of competent
7 jurisdiction when a violation of this part, authorizing
8 statutes, or applicable rules constitutes an emergency
9 affecting the immediate health and safety of a client.

10 (b) Enforce the provisions of this part, authorizing
11 statutes, or any minimum standard, rule, or order issued or
12 entered into pursuant thereto when the attempt by the agency
13 to correct a violation through administrative sanctions has
14 failed or when the violation materially affects the health,
15 safety, or welfare of clients or involves any operation of an
16 unlicensed provider.

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

21 (2) Such injunctive relief may be temporary or
22 permanent.

23 (3) If action is necessary to protect clients of
24 providers from immediate, life-threatening situations, the
25 court may allow a temporary injunction without bond upon
26 proper proof being made. If it appears by competent evidence
27 or a sworn, substantiated affidavit that a temporary
28 injunction should be issued, the court, pending the
29 determination on final hearing, shall enjoin the operation of
30 the provider.

31

1 408.817 Administrative proceedings.--Administrative
2 proceedings challenging agency licensure enforcement action
3 shall be reviewed on the basis of the facts and conditions
4 that resulted in the agency action.

5 408.818 Health Care Trust Fund.--Unless otherwise
6 prescribed by authorizing statutes, all fees and fines
7 collected pursuant to this part, authorizing statutes, and
8 applicable rules shall be deposited into the Health Care Trust
9 Fund, created in s. 408.16, and used to pay the costs of the
10 agency in administering the provider program paying the fees
11 or fines.

12 408.819 Rules.--The agency may adopt rules necessary
13 to administer this part. Any licensed provider that is in
14 operation at the time of adoption of any applicable rule under
15 this part or authorizing statutes shall be given a reasonable
16 time under the particular circumstances, not to exceed 6
17 months after the date of such adoption, within which to comply
18 with such rule, unless otherwise specified by rule.

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

22 112.0455 Drug-Free Workplace Act.--

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

24 (a) The requirements of ss. 408.801-408.819 apply to
25 the provision of services that necessitate licensure pursuant
26 to this section and part II of chapter 408 and to entities
27 licensed by or applying for such licensure from the Agency for
28 Health Care Administration pursuant to this section.

29 (b)~~(a)~~ A laboratory may analyze initial or
30 confirmation drug specimens only if:

31

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

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

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

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

30 ~~d. A provisional license may be granted to an~~
31 ~~applicant when each individual required by this section to~~

1 ~~undergo background screening has met the standards for the~~
2 ~~Department of Law Enforcement background check, but the agency~~
3 ~~has not yet received background screening results from the~~
4 ~~Federal Bureau of Investigation, or a request for a~~
5 ~~disqualification exemption has been submitted to the agency as~~
6 ~~set forth in chapter 435, but a response has not yet been~~
7 ~~issued. A license may be granted to the applicant upon the~~
8 ~~agency's receipt of a report of the results of the Federal~~
9 ~~Bureau of Investigation background screening for each~~
10 ~~individual required by this section to undergo background~~
11 ~~screening which confirms that all standards have been met, or~~
12 ~~upon the granting of a disqualification exemption by the~~
13 ~~agency as set forth in chapter 435. Any other person who is~~
14 ~~required to undergo level 2 background screening may serve in~~
15 ~~his or her capacity pending the agency's receipt of the report~~
16 ~~from the Federal Bureau of Investigation. However, the person~~
17 ~~may not continue to serve if the report indicates any~~
18 ~~violation of background screening standards and a~~
19 ~~disqualification exemption has not been requested of and~~
20 ~~granted by the agency as set forth in 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 applicant from~~
24 ~~the Medicare or Medicaid programs. Proof of compliance with~~
25 ~~the requirements for disclosure of ownership and control~~
26 ~~interests under the Medicaid or Medicare programs shall be~~
27 ~~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 sub-subparagraph.~~

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

22 ~~h. The agency may deny or revoke licensure if the~~
23 ~~applicant:~~

24 ~~(I) Has falsely represented a material fact in the~~
25 ~~application required by sub-subparagraph e. or~~
26 ~~sub-subparagraph f., or has omitted any material fact from the~~
27 ~~application required by sub-subparagraph e. or~~
28 ~~sub-subparagraph f.; or~~

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

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

3 2. The laboratory has written procedures to ensure
4 chain of custody.

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

7 a. The use of internal quality controls including the
8 use of samples of known concentrations which are used to check
9 the performance and calibration of testing equipment, and
10 periodic use of blind samples for overall accuracy.

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

14 c. Security measures implemented by the testing
15 laboratory to preclude adulteration of specimens and drug test
16 results.

17 d. Other necessary and proper actions taken to ensure
18 reliable and accurate drug test results.

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

23 1. The name and address of the laboratory which
24 performed the test and the positive identification of the
25 person tested.

26 2. Positive results on confirmation tests only, or
27 negative results, as applicable.

28 3. A list of the drugs for which the drug analyses
29 were conducted.

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

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

4
5 No report shall 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 reports shall include information on the
12 methods of analyses conducted, the drugs tested for, the
13 number of positive and negative results for both initial and
14 confirmation tests, and any other information deemed
15 appropriate by the Agency for Health Care Administration. No
16 monthly report shall identify specific employees or job
17 applicants.

18 ~~(e)(d)~~ Laboratories shall provide technical assistance
19 to the employer, employee, or job applicant for the purpose of
20 interpreting any positive confirmed test results which could
21 have been caused by prescription or nonprescription medication
22 taken by the employee or job applicant.

23 (13) RULES.--

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

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

1 2. Urine, hair, blood, and other body specimens and
2 minimum specimen amounts which are appropriate for drug
3 testing, not inconsistent with other provisions established by
4 law.

5 3. Methods of analysis and procedures to ensure
6 reliable drug-testing results, including standards for initial
7 tests and confirmation tests, not inconsistent with other
8 provisions established by law.

9 4. Minimum cutoff detection levels for drugs or their
10 metabolites for the purposes of determining a positive test
11 result, not inconsistent with other provisions established by
12 law.

13 5. Chain-of-custody procedures to ensure proper
14 identification, labeling, and handling of specimens being
15 tested, not inconsistent with other provisions established by
16 law.

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

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

22 (17) LICENSE FEE.--Fees from licensure of drug-testing
23 laboratories shall be sufficient to carry out the
24 responsibilities of the Agency for Health Care Administration
25 for the regulation of drug-testing laboratories. In accordance
26 with s. 408.805, an applicant or licensee shall pay a fee for
27 each license application submitted under this part and part II
28 of chapter 408. The fee may not be less than \$16,000 or more
29 than \$20,000 per biennium and shall be established by rule.
30 ~~The Agency for Health Care Administration shall collect fees~~
31 ~~for all licenses issued under this part. Each nonrefundable~~

1 ~~fee shall be due at the time of application and shall be~~
2 ~~payable to the Agency for Health Care Administration to be~~
3 ~~deposited in a trust fund administered by the Agency for~~
4 ~~Health Care Administration and used only for the purposes of~~
5 ~~this section. The fee schedule is as follows: For licensure~~
6 ~~as a drug-testing laboratory, an annual fee of not less than~~
7 ~~\$8,000 or more than \$10,000 per fiscal year; for late filing~~
8 ~~of an application for renewal, an additional fee of \$500 per~~
9 ~~day shall be charged.~~

10 Section 7. Section 383.301, Florida Statutes, is
11 amended to read:

12 383.301 Licensure and regulation of birth centers;
13 legislative intent.--It is the intent of the Legislature to
14 provide for the protection of public health and safety in the
15 establishment, maintenance, and operation of birth centers by
16 providing for licensure of birth centers and for the
17 development, establishment, and enforcement of minimum
18 standards with respect to birth centers. The requirements of
19 part II of chapter 408 apply to the provision of services that
20 necessitate licensure pursuant to ss. 383.30-383.335 and part
21 II of chapter 408 and to entities licensed by or applying for
22 such licensure from the Agency for Health Care Administration
23 pursuant to ss. 383.30-383.335.

24 Section 8. Section 383.304, Florida Statutes, is
25 repealed.

26 Section 9. Section 383.305, Florida Statutes, is
27 amended to read:

28 383.305 Licensure; ~~issuance, renewal, denial,~~
29 ~~suspension, revocation; fees; background screening.--~~

30 (1) 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
2 amount of the fee shall be established by rule.

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

8 ~~(b) A provisional license may be issued to any birth~~
9 ~~center that is in substantial compliance with ss.~~
10 ~~383.30-383.335 and with the rules of the agency. A~~
11 ~~provisional license may be granted for a period of no more~~
12 ~~than 1 year from the effective date of rules adopted by the~~
13 ~~agency, shall expire automatically at the end of its term, and~~
14 ~~may not be renewed.~~

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

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

28 ~~(3)(a) Each application for a birth center license, or~~
29 ~~renewal thereof, shall be accompanied by a license fee. Fees~~
30 ~~shall be established by rule of the agency. Such fees are~~
31 ~~payable to the agency and shall be deposited in a trust fund~~

1 ~~administered by the agency, to be used for the sole purpose of~~
2 ~~carrying out the provisions of ss. 383.30-383.335.~~

3 ~~(b) The fees established pursuant to ss.~~
4 ~~383.30-383.335 shall be based on actual costs incurred by the~~
5 ~~agency in the administration of its duties under such~~
6 ~~sections.~~

7 ~~(4) Each license is valid only for the person or~~
8 ~~governmental unit to whom or which it is issued; is not~~
9 ~~subject to sale, assignment, or other transfer, voluntary or~~
10 ~~involuntary; and is not valid for any premises other than~~
11 ~~those for which it was originally issued.~~

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

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

19 ~~(2)(7)~~ Each applicant for licensure must comply with
20 the following requirements of part II of chapter 408, with the
21 exception of s. 408.810(7)-(10).+

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, or other similarly~~
26 ~~titled individual who is responsible for the daily operation~~
27 ~~of the center, and of the financial officer, or other~~
28 ~~similarly titled individual who is responsible for the~~
29 ~~financial operation of the center, including billings for~~
30 ~~patient care and services. The applicant must comply with the~~

31

1 ~~procedures for level 2 background screening as set forth in~~
2 ~~chapter 435 as well as the requirements of s. 435.03(3).~~

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

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

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

1 ~~violation of background screening standards and a~~
2 ~~disqualification exemption has not been requested of and~~
3 ~~granted by the agency as set forth in chapter 435.~~

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

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

29 ~~(g) A license may not be granted to an applicant if~~
30 ~~the applicant or managing employee has been found guilty of,~~
31 ~~regardless of adjudication, or has entered a plea of nolo~~

1 ~~contendere or guilty to, any offense prohibited under the~~
2 ~~level 2 standards for screening set forth in chapter 435,~~
3 ~~unless an exemption from disqualification has been granted by~~
4 ~~the agency as set forth in chapter 435.~~

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

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

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

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

16 Section 10. Section 383.309, Florida Statutes, is
17 amended to read:

18 383.309 Minimum standards for birth centers; rules and
19 enforcement.--

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

24 (a) Sufficient numbers and qualified types of
25 personnel and occupational disciplines are available at all
26 times to provide necessary and adequate patient care and
27 safety.

28 (b) Infection control, housekeeping, sanitary
29 conditions, disaster plan, and medical record procedures that
30 will adequately protect patient care and provide safety are
31 established and implemented.

1 (c) Licensed facilities are established, organized,
2 and operated consistent with established programmatic
3 standards.

4 ~~(2) Any licensed facility that is in operation at the~~
5 ~~time of adoption of any applicable rule under ss.~~
6 ~~383.30-383.335 shall be given a reasonable time under the~~
7 ~~particular circumstances, not to exceed 1 year after the date~~
8 ~~of such adoption, within which to comply with such rule.~~

9 (2)~~(3)~~ The agency may not establish any rule governing
10 the design, construction, erection, alteration, modification,
11 repair, or demolition of birth centers. It is the intent of
12 the Legislature to preempt that function to the Florida
13 Building Commission and the State Fire Marshal through
14 adoption and maintenance of the Florida Building Code and the
15 Florida Fire Prevention Code. However, the agency shall
16 provide technical assistance to the commission and the State
17 Fire Marshal in updating the construction standards of the
18 Florida Building Code and the Florida Fire Prevention Code
19 which govern birth centers. In addition, the agency may
20 enforce the special-occupancy provisions of the Florida
21 Building Code and the Florida Fire Prevention Code which apply
22 to birth centers in conducting any inspection authorized under
23 this chapter.

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

26 383.315 Agreements with consultants for advice or
27 services; maintenance.--

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

1 Section 12. Section 383.324, Florida Statutes, is
2 amended to read:

3 383.324 ~~Inspections and investigations~~ Inspection
4 fees.--

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

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

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

14 Section 13. Section 383.325, Florida Statutes, is
15 repealed.

16 Section 14. Section 383.33, Florida Statutes, is
17 amended to read:

18 383.33 Administrative fines ~~penalties~~; emergency
19 ~~orders~~; moratorium on admissions.--

20 ~~(1)(a) In addition to the requirements of part II of~~
21 chapter 408, the agency may ~~deny, revoke, or suspend a~~
22 license, or impose an administrative fine, not to exceed \$500
23 per violation per day, for the violation of any provision of
24 ss. 383.30-383.335, part II of chapter 408, or applicable
25 rules or any rule adopted under ss. 383.30-383.335. Each day
26 of violation constitutes a separate violation and is subject
27 to a separate fine.

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

31

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

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

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

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

14 ~~(2) The agency may issue an emergency order~~
15 ~~immediately suspending or revoking a license when it~~
16 ~~determines that any condition in the licensed facility~~
17 ~~presents a clear and present danger to the public health and~~
18 ~~safety.~~

19 ~~(3) The agency may impose an immediate moratorium on~~
20 ~~elective admissions to any licensed facility, building or~~
21 ~~portion thereof, or service when the agency determines that~~
22 ~~any condition in the facility presents a threat to the public~~
23 ~~health or safety.~~

24 Section 15. Sections 383.331 and 383.332, Florida
25 Statutes, are repealed.

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

28 383.335 Partial exemptions.--

29 (1) Any facility that ~~which~~ was providing obstetrical
30 and gynecological surgical services and was owned and operated
31 by a board-certified obstetrician on June 15, 1984, and that

1 ~~which~~ is otherwise subject to licensure under ss.
2 383.30-383.335 as a birth center, is exempt from the
3 provisions of ss. 383.30-383.335 and part II of chapter 408
4 which restrict the provision of surgical services and outlet
5 forceps delivery and the administration of anesthesia at birth
6 centers. The agency shall adopt rules specifically related to
7 the performance of such services and the administration of
8 anesthesia at such facilities.

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

11 390.011 Definitions.--As used in this chapter, the
12 term:

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

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

17 390.012 Powers of agency; rules; disposal of fetal
18 remains.--

19 (1) The agency may ~~shall have the authority to~~ develop
20 and enforce rules under ss. 390.001-390.021 and part II of
21 chapter 408 for the health, care, and treatment of persons in
22 abortion clinics and for the safe operation of such clinics.
23 These rules shall be comparable to rules which apply to all
24 surgical procedures requiring approximately the same degree of
25 skill and care as the performance of first trimester
26 abortions. The rules shall be reasonably related to the
27 preservation of maternal health of the clients. The rules
28 shall not impose a legally significant burden on a woman's
29 freedom to decide whether to terminate her pregnancy. The
30 rules shall provide for:

31

1 (a) The performance of pregnancy termination
2 procedures only by a licensed physician.

3 (b) The making, protection, and preservation of
4 patient records, which shall be treated as medical records
5 under chapter 458.

6 Section 19. Section 390.013, Florida Statutes, is
7 repealed.

8 Section 20. Section 390.014, Florida Statutes, is
9 amended to read:

10 390.014 Licenses; fees, ~~display, etc.--~~

11 (1) The requirements of part II of chapter 408 apply
12 to the provision of services that necessitate licensure
13 pursuant to ss. 390.011-390.021 and part II of chapter 408 and
14 to entities licensed by or applying for such licensure from
15 the Agency for Health Care Administration pursuant to ss.
16 390.011-390.021. However, an applicant for licensure is exempt
17 from s. 408.810(7)-(10).~~No abortion clinic shall operate in~~
18 ~~this state without a currently effective license issued by the~~
19 ~~agency.~~

20 (2) A separate license shall be required for each
21 clinic maintained on separate premises, even though it is
22 operated by the same management as another clinic; but a
23 separate license shall not be required for separate buildings
24 on the same premises.

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 fee
28 shall be established by rule and ~~The annual license fee~~
29 ~~required for a clinic shall be nonrefundable and shall be~~
30 ~~reasonably calculated to cover the cost of regulation under~~
31

1 ~~this chapter, but~~ may not be less than \$70 or \$35 nor more
2 than \$500 per biennium ~~\$250~~.

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

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

8 ~~(6) A license shall be valid only for the clinic to~~
9 ~~which it is issued, and it shall not be subject to sale,~~
10 ~~assignment, or other transfer, voluntary or involuntary. No~~
11 ~~license shall be valid for any premises other than those for~~
12 ~~which it was originally issued.~~

13 Section 21. Sections 390.015, 390.016, and 390.017,
14 Florida Statutes, are repealed.

15 Section 22. Section 390.018, Florida Statutes, is
16 amended to read:

17 390.018 Administrative fine penalty in lieu of
18 revocation or suspension. -- In addition to the requirements of
19 part II of chapter 408 if the agency finds that one or more
20 grounds exist for the revocation or suspension of a license
21 issued to an abortion clinic, the agency may, in lieu of such
22 suspension or revocation, impose a fine upon the clinic in an
23 amount not to exceed \$1,000 for each violation of any
24 provision of this part, part II of chapter 408, or applicable
25 rules. The fine shall be paid to the agency within 60 days
26 from the date of entry of the administrative order. If the
27 licensee fails to pay the fine in its entirety to the agency
28 within the period allowed, the license of the licensee shall
29 stand suspended, revoked, or renewal or continuation may be
30 refused, as the case may be, upon expiration of such period
31

1 ~~and without any further administrative or judicial~~
2 ~~proceedings.~~

3 Section 23. Sections 390.019 and 390.021, Florida
4 Statutes, are repealed.

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

7 394.455 Definitions.--As used in this part, unless the
8 context clearly requires otherwise, the term:

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

11 Section 25. Section 394.67, Florida Statutes, is
12 amended to read:

13 394.67 Definitions.--As used in this part, the term:

14 (1) "Agency" means the Agency for Health Care
15 Administration.

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

21 (2)~~(3)~~ "Client" means any individual receiving
22 services in any substance abuse or mental health facility,
23 program, or service, which facility, program, or service is
24 operated, funded, or regulated by the agency and the
25 department or regulated by the agency.

26 (3)~~(4)~~ "Crisis services" means short-term evaluation,
27 stabilization, and brief intervention services provided to a
28 person who is experiencing an acute mental or emotional
29 crisis, as defined in subsection(17)~~(18)~~, or an acute
30 substance abuse crisis, as defined in subsection(18)~~(19)~~, to
31 prevent further deterioration of the person's mental health.

1 Crisis services are provided in settings such as a crisis
2 stabilization unit, an inpatient unit, a short-term
3 residential treatment program, a detoxification facility, or
4 an addictions receiving facility; at the site of the crisis by
5 a mobile crisis response team; or at a hospital on an
6 outpatient basis.

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

12 (5)~~(6)~~ "Department" means the Department of Children
13 and Family Services.

14 (6)~~(7)~~ "Director" means any member of the official
15 board of directors reported in the organization's annual
16 corporate report to the Florida Department of State, or, if no
17 such report is made, any member of the operating board of
18 directors. The term excludes members of separate, restricted
19 boards that serve only in an advisory capacity to the
20 operating board.

21 (7)~~(8)~~ "District administrator" means the person
22 appointed by the Secretary of Children and Family Services for
23 the purpose of administering a department service district as
24 set forth in s. 20.19.

25 (8)~~(9)~~ "District plan" or "plan" means the combined
26 district substance abuse and mental health plan approved by
27 the district administrator and governing bodies in accordance
28 with this part.

29 (9)~~(10)~~ "Federal funds" means funds from federal
30 sources for substance abuse or mental health facilities and
31 programs, exclusive of federal funds that are deemed eligible

1 by the Federal Government, and are eligible through state
2 regulation, for matching purposes.

3 (10)~~(11)~~ "Governing body" means the chief legislative
4 body of a county, a board of county commissioners, or boards
5 of county commissioners in counties acting jointly, or their
6 counterparts in a charter government.

7 (11)~~(12)~~ "Health and human services board" or "board"
8 means the board within a district or subdistrict of the
9 department which is established in accordance with s. 20.19
10 and designated in this part for the purpose of assessing the
11 substance abuse and mental health needs of the community and
12 developing a plan to address those needs.

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

15 (13)~~(14)~~ "Local matching funds" means funds received
16 from governing bodies of local government, including city
17 commissions, county commissions, district school boards,
18 special tax districts, private hospital funds, private gifts,
19 both individual and corporate, and bequests and funds received
20 from community drives or any other sources.

21 (14)~~(15)~~ "Managing employee" means the administrator
22 or other similarly titled individual who is responsible for
23 the daily operation of the facility.

24 (15)~~(16)~~ "Mental health services" means those
25 therapeutic interventions and activities that help to
26 eliminate, reduce, or manage symptoms or distress for persons
27 who have severe emotional distress or a mental illness and to
28 effectively manage the disability that often accompanies a
29 mental illness so that the person can recover from the mental
30 illness, become appropriately self-sufficient for his or her
31 age, and live in a stable family or in the community. The term

1 also includes those preventive interventions and activities
2 that reduce the risk for or delay the onset of mental
3 disorders. The term includes the following types of services:

4 (a) Treatment services, such as psychiatric
5 medications and supportive psychotherapies, which are intended
6 to reduce or ameliorate the symptoms of severe distress or
7 mental illness.

8 (b) Rehabilitative services, which are intended to
9 reduce or eliminate the disability that is associated with
10 mental illness. Rehabilitative services may include assessment
11 of personal goals and strengths, readiness preparation,
12 specific skill training, and assistance in designing
13 environments that enable individuals to maximize their
14 functioning and community participation.

15 (c) Support services, which include services that
16 assist individuals in living successfully in environments of
17 their choice. Such services may include income supports,
18 social supports, housing supports, vocational supports, or
19 accommodations related to the symptoms or disabilities
20 associated with mental illness.

21 (d) Case management services, which are intended to
22 assist individuals in obtaining the formal and informal
23 resources that they need to successfully cope with the
24 consequences of their illness. Resources may include treatment
25 or rehabilitative or supportive interventions by both formal
26 and informal providers. Case management may include an
27 assessment of client needs; intervention planning with the
28 client, his or her family, and service providers; linking the
29 client to needed services; monitoring service delivery;
30 evaluating the effect of services and supports; and advocating
31 on behalf of the client.

1
2 Mental health services may be delivered in a variety of
3 settings, such as inpatient, residential, partial hospital,
4 day treatment, outpatient, club house, or a drop-in or
5 self-help center, as well as in other community settings, such
6 as the client's residence or workplace. The types and
7 intensity of services provided shall be based on the client's
8 clinical status and goals, community resources, and
9 preferences. Services such as assertive community treatment
10 involve all four types of services which are delivered by a
11 multidisciplinary treatment team that is responsible for
12 identified individuals who have a serious mental illness.

13 (16)~~(17)~~ "Patient fees" means compensation received by
14 a community substance abuse or mental health facility for
15 services rendered to a specific client from any source of
16 funds, including city, county, state, federal, and private
17 sources.

18 (17)~~(18)~~ "Person who is experiencing an acute mental
19 or emotional crisis" means a child, adolescent, or adult who
20 is experiencing a psychotic episode or a high level of mental
21 or emotional distress which may be precipitated by a traumatic
22 event or a perceived life problem for which the individual's
23 typical coping strategies are inadequate. The term includes an
24 individual who meets the criteria for involuntary examination
25 specified in s. 394.463(1).

26 (18)~~(19)~~ "Person who is experiencing an acute
27 substance abuse crisis" means a child, adolescent, or adult
28 who is experiencing a medical or emotional crisis because of
29 the use of alcoholic beverages or any psychoactive or
30 mood-altering substance. The term includes an individual who
31

1 meets the criteria for involuntary admission specified in s.
2 397.675.

3 (19)~~(20)~~ "Premises" means those buildings, beds, and
4 facilities located at the main address of the licensee and all
5 other buildings, beds, and facilities for the provision of
6 acute or residential care which are located in such reasonable
7 proximity to the main address of the licensee as to appear to
8 the public to be under the dominion and control of the
9 licensee.

10 (20)~~(21)~~ "Program office" means the Mental Health
11 Program Office of the Department of Children and Family
12 Services.

13 (21)~~(22)~~ "Residential treatment center for children
14 and adolescents" means a 24-hour residential program,
15 including a therapeutic group home, which provides mental
16 health services to emotionally disturbed children or
17 adolescents as defined in s. 394.492(5) or (6) and which is a
18 private for-profit or not-for-profit corporation under
19 contract with the department which offers a variety of
20 treatment modalities in a more restrictive setting.

21 (22)~~(23)~~ "Residential treatment facility" means a
22 facility providing residential care and treatment to
23 individuals exhibiting symptoms of mental illness who are in
24 need of a 24-hour-per-day, 7-day-a-week structured living
25 environment, respite care, or long-term community placement.

26 (23) "Short-term residential treatment facility" means
27 a program that provides an alternative to inpatient
28 hospitalization and that provides brief, intensive services 24
29 hours a day, 7 days a week, for mentally ill individuals who
30 are temporarily in need of a 24-hour-a-day structured

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1 therapeutic setting in a less restrictive, but longer-stay
2 alternative to hospitalization.

3 (24) "Sliding fee scale" means a schedule of fees for
4 identified services delivered by a service provider which are
5 based on a uniform schedule of discounts deducted from the
6 service provider's usual and customary charges. These charges
7 must be consistent with the prevailing market rates in the
8 community for comparable services.

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

14 (a) Prevention services, which include information
15 dissemination; education regarding the consequences of
16 substance abuse; alternative drug-free activities; problem
17 identification; referral of persons to appropriate prevention
18 programs; community-based programs that involve members of
19 local communities in prevention activities; and environmental
20 strategies to review, change, and enforce laws that control
21 the availability of controlled and illegal substances.

22 (b) Assessment services, which include the evaluation
23 of individuals and families in order to identify their
24 strengths and determine their required level of care,
25 motivation, and need for treatment and ancillary services.

26 (c) Intervention services, which include early
27 identification, short-term counseling and referral, and
28 outreach.

29 (d) Rehabilitation services, which include
30 residential, outpatient, day or night, case management,
31

1 in-home, psychiatric, and medical treatment, and methadone or
2 medication management.

3 (e) Ancillary services, which include self-help and
4 other support groups and activities; aftercare provided in a
5 structured, therapeutic environment; supported housing;
6 supported employment; vocational services; and educational
7 services.

8 Section 26. Section 394.875, Florida Statutes, is
9 amended to read:

10 394.875 Crisis stabilization units, short-term
11 residential treatment facilities, residential treatment
12 facilities, and residential treatment centers for children and
13 adolescents; authorized services; license required;
14 penalties.--

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

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

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1 ~~(c)(b)~~ The purpose of a residential treatment facility
2 is to be a part of a comprehensive treatment program for
3 mentally ill individuals in a community-based residential
4 setting.

5 ~~(d)(c)~~ The purpose of a residential treatment center
6 for children and adolescents is to provide mental health
7 assessment and treatment services pursuant to ss. 394.491,
8 394.495, and 394.496 to children and adolescents who meet the
9 target population criteria specified in s. 394.493(1)(a), (b),
10 or (c).

11 (2) The requirements of part II of chapter 408 apply
12 to the provision of services that necessitate licensure
13 pursuant to ss. 394.455-394.904 and part II of chapter 408 and
14 to entities licensed by or applying for such licensure from
15 the Agency for Health Care Administration pursuant to ss.
16 394.455-394.904. However, an applicant for licensure is exempt
17 from the provisions of s. 408.810(8), (9), and (10). It is
18 unlawful for any entity to hold itself out as a crisis
19 stabilization unit, a residential treatment facility, or a
20 residential treatment center for children and adolescents, or
21 to act as a crisis stabilization unit, a residential treatment
22 facility, or a residential treatment center for children and
23 adolescents, unless it is licensed by the agency pursuant to
24 this chapter.

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

28 ~~(4) The agency may maintain an action in circuit court~~
29 ~~to enjoin the unlawful operation of a crisis stabilization~~
30 ~~unit, a residential treatment facility, or a residential~~
31 ~~treatment center for children and adolescents if the agency~~

1 ~~first gives the violator 14 days' notice of its intention to~~
2 ~~maintain such action and if the violator fails to apply for~~
3 ~~licensure within such 14-day period.~~

4 (3)(5) The following entities are exempt from
5 licensure as required in ss. 394.455-394.904 Subsection (2)
6 does not apply to:

7 (a) Hospitals licensed under chapter 395 or programs
8 operated within such hospitals.~~Homes for special services~~
9 ~~licensed under chapter 400; or~~

10 (b) Nursing homes licensed under chapter 400.

11 (c) Comprehensive transitional education programs
12 licensed under s. 393.067.

13 (4)(6) The department, in consultation with the
14 agency, may establish multiple license classifications for
15 residential treatment facilities.

16 (5)(7) The agency may not issue a license to a crisis
17 stabilization unit unless the unit receives state mental
18 health funds and is affiliated with a designated public
19 receiving facility.

20 (6)(8) The agency may issue a license for a crisis
21 stabilization unit or short-term residential treatment
22 facility, certifying the number of authorized beds for such
23 facility as indicated by existing need and available
24 appropriations. The agency may disapprove an application for
25 such a license if it determines that a facility should not be
26 licensed pursuant to the provisions of this chapter. Any
27 facility operating beds in excess of those authorized by the
28 agency shall, upon demand of the agency, reduce the number of
29 beds to the authorized number, forfeit its license, or provide
30 evidence of a license issued pursuant to chapter 395 for the
31 excess beds.

1 (7)~~(9)~~ A children's crisis stabilization unit which
2 does not exceed 20 licensed beds and which provides separate
3 facilities or a distinct part of a facility, separate
4 staffing, and treatment exclusively for minors may be located
5 on the same premises as a crisis stabilization unit serving
6 adults. The department, in consultation with the agency, shall
7 adopt rules governing facility construction, staffing and
8 licensure requirements, and the operation of such units for
9 minors.

10 (8)~~(10)~~ The department, in consultation with the
11 agency, must adopt rules governing a residential treatment
12 center for children and adolescents which specify licensure
13 standards for: admission; length of stay; program and
14 staffing; discharge and discharge planning; treatment
15 planning; seclusion, restraints, and time-out; rights of
16 patients under s. 394.459; use of psychotropic medications;
17 and standards for the operation of such centers.

18 (9)~~(11)~~ Notwithstanding the provisions of subsection
19 (6)~~(8)~~, crisis stabilization units may not exceed their
20 licensed capacity by more than 10 percent, nor may they exceed
21 their licensed capacity for more than 3 consecutive working
22 days or for more than 7 days in 1 month.

23 (10)~~(12)~~ Notwithstanding the other provisions of this
24 section, any facility licensed under former chapter 396 and
25 chapter 397 for detoxification, residential level I care, and
26 outpatient treatment may elect to license concurrently all of
27 the beds at such facility both for that purpose and as a
28 long-term residential treatment facility pursuant to this
29 section, if all of the following conditions are met:

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

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

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

8 (d) The number of beds to be licensed under this
9 chapter is equal to or less than the number of beds licensed
10 under former chapter 396 and chapter 397 as of January 1,
11 1993.

12 (e) The licensee agrees in writing to a condition
13 placed upon the license that the facility will limit its
14 treatment exclusively to law enforcement personnel and their
15 immediate families who are seeking admission on a voluntary
16 basis and who are exhibiting symptoms of posttraumatic stress
17 disorder or other mental health problems, including drug or
18 alcohol abuse, which are directly related to law enforcement
19 work and which are amenable to verbal treatment therapies; the
20 licensee agrees to coordinate the provision of appropriate
21 postresidential care for discharged individuals; and the
22 licensee further agrees in writing that a failure to meet any
23 condition specified in this paragraph shall constitute grounds
24 for a revocation of the facility's license as a residential
25 treatment facility.

26 (f) The licensee agrees that the facility will meet
27 all licensure requirements for a residential treatment
28 facility, including minimum standards for compliance with
29 lifesafety requirements, except those licensure requirements
30 which are in express conflict with the conditions and other
31 provisions specified in this subsection.

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

4
5 Any facility licensed under this subsection is not required to
6 provide any services to any persons except those included in
7 the specified conditions of licensure, and is exempt from any
8 requirements related to the 60-day or greater average length
9 of stay imposed on community-based residential treatment
10 facilities otherwise licensed under this chapter.

11 ~~(13) Each applicant for licensure must comply with the~~
12 ~~following requirements:~~

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

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

28 ~~(c) Proof of compliance with the level 2 background~~
29 ~~screening requirements of chapter 435 which has been submitted~~
30 ~~within the previous 5 years in compliance with any other~~

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

3 ~~(d) A provisional 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 standard license may be granted to the applicant~~
12 ~~upon the agency's receipt of a report of the results of the~~
13 ~~Federal 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 shall 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 Section 27. Section 394.876, Florida Statutes, is
7 repealed.

8 Section 28. Section 394.877, Florida Statutes, is
9 amended to read:

10 394.877 Fees.--

11 ~~(1) In accordance with s. 408.805, an applicant or~~
12 licensee shall pay a fee for each license application
13 submitted under this part and part II of chapter 408. The
14 amount of the fee shall be established by rule.~~Each~~
15 ~~application for licensure or renewal must be accompanied by a~~
16 ~~fee set by the department, in consultation with the agency, by~~
17 ~~rule. Such fees shall be reasonably calculated to cover only~~
18 ~~the cost of regulation under this chapter.~~

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

21 Section 29. Section 394.878, Florida Statutes, is
22 amended to read:

23 394.878 Issuance and renewal of licenses.--

24 ~~(1) Upon review of the application for licensure and~~
25 ~~receipt of appropriate fees, the agency shall issue an~~
26 ~~original or renewal license to any applicant that meets the~~
27 ~~requirements of this chapter.~~

28 ~~(2) A license is valid for a period of 1 year. An~~
29 ~~applicant for renewal of a license shall apply to the agency~~
30 ~~no later than 90 days before expiration of the current~~
31 ~~license.~~

1 ~~(3) A license may not be transferred from one entity~~
2 ~~to another and is valid only for the premises for which it was~~
3 ~~originally issued. For the purposes of this subsection,~~
4 ~~"transfer" includes, but is not limited to, transfer of a~~
5 ~~majority of the ownership interests in a licensee or transfer~~
6 ~~of responsibilities under the license to another entity by~~
7 ~~contractual arrangement.~~

8 ~~(4) Each license shall state the services which the~~
9 ~~licensee is required or authorized to perform and the maximum~~
10 ~~residential capacity of the licensed premises.~~

11 (1)~~(5)~~ The agency may issue a probationary license to
12 an applicant that has completed the application requirements
13 of this chapter but has not, at the time of the application,
14 developed an operational crisis stabilization unit or
15 residential treatment facility. The probationary license
16 shall expire 90 days after issuance and may once be renewed
17 for an additional 90-day period. The agency may cancel a
18 probationary license at any time.

19 (2)~~(6)~~ The agency may issue an interim license to an
20 applicant that has substantially completed all application
21 requirements and has initiated action to fully meet such
22 requirements. The interim license shall expire 90 days after
23 issuance and, in cases of extreme hardship, may once be
24 renewed for an additional 90-day period.

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

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

31 394.879 Rules; enforcement.--

1 (1) The agency, in consultation with the department,
2 may adopt rules to administer part II of chapter 408.The
3 department, in consultation with the agency, shall adopt rules
4 pursuant to ss. 120.536(1) and 120.54 to implement the
5 provisions of this chapter, including, at a minimum, rules
6 providing standards to ensure that:

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

10 (b) Adequate space is provided each client of a
11 licensed facility.

12 (c) Licensed facilities are limited to an appropriate
13 number of beds.

14 (d) Each licensee establishes and implements adequate
15 infection control, housekeeping, sanitation, disaster
16 planning, and medical recordkeeping.

17 (e) Licensed facilities are established, organized,
18 and operated in accordance with programmatic standards of the
19 department.

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

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

27 (4) In accordance with part II of chapter 408,the
28 agency may impose an administrative penalty of no more than
29 \$500 per day against any licensee that violates any rule
30 adopted pursuant to this section and may ~~suspend or~~ revoke the
31 license or deny the renewal application of such licensee. In

1 imposing such penalty, the agency shall consider the severity
2 of the violation, actions taken by the licensee to correct the
3 violation, and previous violations by the licensee. Fines
4 collected under this subsection shall be deposited in the
5 Mental Health Facility Licensing Trust Fund.

6 Section 31. Paragraph (a) of subsection (1) of section
7 394.90, Florida Statutes, is amended to read:

8 394.90 Inspection; right of entry; records.--

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

13 Section 32. Section 394.902, Florida Statutes, is
14 amended to read:

15 394.902 Denial, ~~suspension, and revocation; other~~
16 ~~remedies.--~~

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

21 ~~(2) The agency may impose a moratorium on elective~~
22 ~~admissions to a licensee or any program or portion of a~~
23 ~~licensed facility if the agency determines that any condition~~
24 ~~in the facility presents a threat to the public health or~~
25 ~~safety.~~

26 ~~(3) If the agency determines that an applicant or~~
27 ~~licensee is not in compliance with this chapter or the rules~~
28 ~~adopted under this chapter, the agency may deny, suspend, or~~
29 ~~revoke the license or application or may suspend, revoke, or~~
30 ~~impose reasonable restrictions on any portion of the license.~~

31 If a license is revoked, the licensee is barred from

1 submitting any application for licensure to the agency for a
2 period of 6 months following revocation.

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

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

9 Section 33. Subsection (4) of section 395.002, Florida
10 Statutes, is repealed.

11 Section 34. Section 395.003, Florida Statutes, is
12 amended to read:

13 395.003 Licensure; ~~issuance, renewal, denial,~~
14 ~~modification, suspension, and revocation.--~~

15 (1)(a) The requirements of part II of chapter 408
16 apply to the provision of services that necessitate licensure
17 pursuant to ss. 395.001-395.1065 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.
20 395.001-395.1065. However, an applicant for licensure is
21 exempt from certain requirements of s. 408.810, as follows:

22 (a) An applicant for an ambulatory surgery center or a
23 mobile surgical facility license is exempt from s.
24 408.810(7)-(10); and

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

30 (2)(a)(b)1. A ~~It is unlawful for any person~~ may not to
31 use or advertise to the public, in any way or by any medium

1 whatsoever, any facility as a "hospital," "ambulatory surgical
2 center," or "mobile surgical facility" unless such facility
3 has first secured a license under the provisions of this part.

4 (b)2. ~~Nothing in This part does not apply~~ applies to
5 veterinary hospitals or to commercial business establishments
6 using the word "hospital," "ambulatory surgical center," or
7 "mobile surgical facility" as a part of a trade name if ~~no~~
8 treatment of human beings is not performed on the premises of
9 such establishments.

10 ~~(2)(a) Upon the receipt of an application for a~~
11 ~~license and the license fee, the agency shall issue a license~~
12 ~~if the applicant and facility have received all approvals~~
13 ~~required by law and meet the requirements established under~~
14 ~~this part and in rules. Such license shall include all beds~~
15 ~~and services located on the premises of the facility.~~

16 ~~(b) A provisional license may be issued to a new~~
17 ~~facility or a facility that is in substantial compliance with~~
18 ~~this part and with the rules of the agency. A provisional~~
19 ~~license shall be granted for a period of no more than 1 year~~
20 ~~and shall expire automatically at the end of its term. A~~
21 ~~provisional license may not be renewed.~~

22 ~~(c) A license, unless sooner suspended or revoked,~~
23 ~~shall automatically expire 2 years from the date of issuance~~
24 ~~and shall be renewable biennially upon application for renewal~~
25 ~~and payment of the fee prescribed by s. 395.004(2), provided~~
26 ~~the applicant and licensed facility meet the requirements~~
27 ~~established under this part and in rules. An application for~~
28 ~~renewal of a license shall be made 90 days prior to expiration~~
29 ~~of the license, on forms provided by the agency.~~

30 (3)(d) The agency shall, at the request of a licensee,
31 issue a single license to a licensee for facilities located on

1 separate premises. Such a license shall specifically state
2 the location of the facilities, the services, and the licensed
3 beds available on each separate premises. If a licensee
4 requests a single license, the licensee shall designate which
5 facility or office is responsible for receipt of information,
6 payment of fees, service of process, and all other activities
7 necessary for the agency to carry out the provisions of this
8 part.

9 (4)~~(e)~~ The agency shall, at the request of a licensee
10 that is a teaching hospital as defined in s. 408.07(44), issue
11 a single license to a licensee for facilities that have been
12 previously licensed as separate premises, provided such
13 separately licensed facilities, taken together, constitute the
14 same premises as defined in s. 395.002(24). Such license for
15 the single premises shall include all of the beds, services,
16 and programs that were previously included on the licenses for
17 the separate premises. The granting of a single license under
18 this paragraph shall not in any manner reduce the number of
19 beds, services, or programs operated by the licensee.

20 (5)~~(f)~~ Intensive residential treatment programs for
21 children and adolescents which have received accreditation
22 from the Joint Commission on Accreditation of Healthcare
23 Organizations and which meet the minimum standards developed
24 by rule of the agency for such programs shall be licensed by
25 the agency under this part.

26 ~~(3)(a) Each license shall be valid only for the person~~
27 ~~to whom it is issued and shall not be sold, assigned, or~~
28 ~~otherwise transferred, voluntarily or involuntarily. A~~
29 ~~license is only valid for the premises for which it was~~
30 ~~originally issued.~~

31

1 ~~(b)1. An application for a new license is required if~~
2 ~~ownership, a majority of the ownership, or controlling~~
3 ~~interest of a licensed facility is transferred or assigned and~~
4 ~~when a lessee agrees to undertake or provide services to the~~
5 ~~extent that legal liability for operation of the facility~~
6 ~~rests with the lessee. The application for a new license~~
7 ~~showing such change shall be made at least 60 days prior to~~
8 ~~the date of the sale, transfer, assignment, or lease.~~

9 (6)2. After a change of ownership has occurred, the
10 transferee shall be liable for any liability to the state,
11 regardless of when identified, resulting from changes to
12 allowable costs affecting provider reimbursement for Medicaid
13 participation or Public Medical Assistance Trust Fund
14 Assessments, and related administrative fines. ~~The~~
15 ~~transferee, simultaneously with the transfer of ownership,~~
16 ~~shall pay or make arrangements to pay to the agency or the~~
17 ~~department any amount owed to the agency or the department;~~
18 ~~payment assurances may be in the form of an irrevocable credit~~
19 ~~instrument or payment bond acceptable to the agency or the~~
20 ~~department provided by or on behalf of the transferor. The~~
21 ~~issuance of a license to the transferee shall be delayed~~
22 ~~pending payment or until arrangement for payment acceptable to~~
23 ~~the agency or the department is made.~~

24 (7)(4) The agency shall issue a license which
25 specifies the service categories and the number of hospital
26 beds in each bed category for which a license is received.
27 Such information shall be listed on the face of the license.
28 All beds which are not covered by any specialty-bed-need
29 methodology shall be specified as general beds. A licensed
30 facility shall not operate a number of hospital beds greater
31 than the number indicated by the agency on the face of the

1 license without approval from the agency under conditions
2 established by rule.

3 (8)~~(5)~~(a) Adherence to patient rights, standards of
4 care, and examination and placement procedures provided under
5 part I of chapter 394 shall be a condition of licensure for
6 hospitals providing voluntary or involuntary medical or
7 psychiatric observation, evaluation, diagnosis, or treatment.

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

12 (9)~~(6)~~ A ~~No~~ specialty hospital may not ~~shall~~ provide
13 any service or regularly serve any population group beyond
14 those services or groups specified in its license.

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

17 (10)~~(8)~~ In addition to the requirements of ss.
18 408.801-408.819, whenever the agency finds that there has been
19 a substantial failure to comply with the requirements
20 established under this part or in rules, the agency is
21 authorized to deny, modify, suspend, or revoke:

22 (a) A license;

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

25 (c) Licensure approval limited to a facility,
26 building, or portion thereof, or a service, within a given
27 premises.

28 Section 35. Section 395.004, Florida Statutes, is
29 amended to read:

30 395.004 ~~Application for license, Fees, expenses.--~~

31

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 ss. 408.801-408.819. The amount
4 of the fee shall be established by rule ~~An application for a~~
5 ~~license or renewal thereof shall be made under oath to the~~
6 ~~agency, upon forms provided by it, and shall contain such~~
7 ~~information as the agency reasonably requires, which may~~
8 ~~include affirmative evidence of ability to comply with~~
9 ~~applicable laws and rules.~~

10 ~~(2)~~ ~~Each application for a general hospital license,~~
11 ~~specialty hospital license, ambulatory surgical center~~
12 ~~license, or mobile surgical facility license, or renewal~~
13 ~~thereof, shall be accompanied by a license fee, in accordance~~
14 ~~with the following schedule:~~

15 ~~(a)~~ ~~The biennial license, provisional license, and~~
16 ~~license renewal fee required of a facility licensed under this~~
17 ~~part shall be reasonably calculated to cover the cost of~~
18 ~~regulation under this part and shall be established by rule at~~
19 ~~the rate of not less than \$9.50 per hospital bed, nor more~~
20 ~~than \$30 per hospital bed, except that the minimum license fee~~
21 ~~shall be \$1,500 and the total fees collected from all licensed~~
22 ~~facilities may not exceed the cost of properly carrying out~~
23 ~~the provisions of this part.~~

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

28 Section 36. Section 395.0055, Florida Statutes, is
29 repealed.

30 Section 37. Section 395.0161, Florida Statutes, is
31 amended to read:

1 395.0161 Licensure inspection.--
2 (1) In accordance with s. 408.811,the agency shall
3 ~~make or cause to be made such inspections and investigations~~
4 ~~as it deems necessary, including:~~
5 ~~(a) Inspections directed by the Health Care Financing~~
6 ~~Administration.~~
7 ~~(b) Validation inspections.~~
8 ~~(c) Lifesafety inspections.~~
9 ~~(d) Licensure complaint investigations, including full~~
10 ~~licensure investigations with a review of all licensure~~
11 ~~standards as outlined in the administrative rules. Complaints~~
12 ~~received by the agency from individuals, organizations, or~~
13 ~~other sources are subject to review and investigation by the~~
14 ~~agency.~~
15 ~~(e) Emergency access complaint investigations.~~
16 ~~(f) inspections of mobile surgical facilities at each~~
17 ~~time a facility establishes a new location, prior to the~~
18 ~~admission of patients. However, such inspections shall not be~~
19 ~~required when a mobile surgical facility is moved temporarily~~
20 ~~to a location where medical treatment will not be provided.~~
21 (2) The agency shall accept, in lieu of its own
22 periodic inspections for licensure, the survey or inspection
23 of an accrediting organization, provided the accreditation of
24 the licensed facility is not provisional and provided the
25 licensed facility authorizes release of, and the agency
26 receives the report of, the accrediting organization. The
27 agency shall develop, and adopt by rule, criteria for
28 accepting survey reports of accrediting organizations in lieu
29 of conducting a state licensure inspection.
30 (3) 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.With the
2 exception of state-operated licensed facilities, each facility
3 licensed under this part shall pay to the agency, at the time
4 of inspection, the following fees:

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

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

13 (4) The agency shall coordinate all periodic
14 inspections for licensure made by the agency to ensure that
15 the cost to the facility of such inspections and the
16 disruption of services by such inspections is minimized.

17 Section 38. Section 395.0162, Florida Statutes, is
18 repealed.

19 Section 39. Subsections (2) and (3) of section
20 395.0163, Florida Statutes, are amended to read:

21 395.0163 Construction inspections; plan submission and
22 approval; fees.--

23 (2)~~(a)~~ The agency is authorized to charge an initial
24 fee of \$2,000 for review of plans and construction on all
25 projects, no part of which is refundable. The agency may also
26 collect a fee, not to exceed 1 percent of the estimated
27 construction cost or the actual cost of review, whichever is
28 less, for the portion of the review which encompasses initial
29 review through the initial revised construction document
30 review. The agency is further authorized to collect its
31 actual costs on all subsequent portions of the review and

1 construction inspections. The initial fee payment shall
2 accompany the initial submission of plans and specifications.
3 Any subsequent payment that is due is payable upon receipt of
4 the invoice from the agency.

5 ~~(b) Notwithstanding any other provisions of law to the~~
6 ~~contrary, all moneys received by the agency pursuant to the~~
7 ~~provisions of this section shall be deposited in the Planning~~
8 ~~and Regulation Trust Fund, as created by s. 395.004, to be~~
9 ~~held and applied solely for the operations required under this~~
10 ~~section.~~

11 (3) In accordance with s. 408.811, the agency shall
12 inspect a mobile surgical facility at initial licensure and at
13 each time the facility establishes a new location, prior to
14 admission of patients. However, such inspections shall not be
15 required when a mobile surgical facility is moved temporarily
16 to a location where medical treatment will not be provided.

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

19 395.0197 Internal risk management program.--

20 (2) The internal risk management program is the
21 responsibility of the governing board of the health care
22 facility. Each licensed facility shall use the services of
23 ~~hire~~ a risk manager, licensed under s. 395.10974, who is
24 responsible for implementation and oversight of such
25 facility's internal risk management program as required by
26 this section. A risk manager must not be made responsible for
27 more than four internal risk management programs in separate
28 hospitals licensed facilities, unless the hospitals facilities
29 are under one corporate ownership or the risk management
30 programs are in rural hospitals.

31

1 Section 41. Section 395.0199, Florida Statutes, is
2 amended to read:

3 395.0199 Private utilization review.--

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

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

7 (b) Foster greater coordination between providers and
8 health insurers performing utilization review.

9 (c) Protect patients and insurance providers by
10 ensuring that private review agents are qualified to perform
11 utilization review activities and to make informed decisions
12 on the appropriateness of medical care.

13 (d) This section does not regulate the activities of
14 private review agents, health insurers, health maintenance
15 organizations, or hospitals, except as expressly provided
16 herein, or authorize regulation or intervention as to the
17 correctness of utilization review decisions of insurers or
18 private review agents.

19 (2) The requirements of part II of chapter 408 apply
20 to the provision of services that necessitate registration or
21 licensure pursuant to this section and part II of chapter 408
22 and to persons registered by or applying for such registration
23 from the Agency for Health Care Administration pursuant to
24 this section. However, an applicant for registration is exempt
25 from the provisions of ss. 408.810(5), (6), (7), (8), (9), and
26 (10) and 408.811. A private review agent conducting
27 utilization review as to health care services performed or
28 proposed to be performed in this state shall register with the
29 agency in accordance with this section.

30 (3) In accordance with s. 408.805, an applicant or
31 registrant shall pay a fee for each registration issued under

1 this part and part II of chapter 408. The amount of the fee
2 shall be established by rule.~~Registration shall be made~~
3 ~~annually with the agency on forms furnished by the agency and~~
4 ~~shall be accompanied by the appropriate registration fee as~~
5 ~~set by the agency. The fee shall be sufficient to pay for the~~
6 ~~administrative costs of registering the agent, but may shall~~
7 ~~not exceed \$250. The agency may also charge reasonable fees,~~
8 ~~reflecting actual costs, to persons requesting copies of~~
9 ~~registration.~~

10 ~~(4) Each applicant for registration must comply with~~
11 ~~the 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 employee or other similarly~~
16 ~~titled individual who is responsible for the operation of the~~
17 ~~entity. The applicant must comply with the procedures for~~
18 ~~level 2 background screening as set forth in chapter 435, as~~
19 ~~well as the requirements of s. 435.03(3).~~

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

25 ~~(c) Proof of compliance with the level 2 background~~
26 ~~screening requirements of chapter 435 which has been submitted~~
27 ~~within the previous 5 years in compliance with any other~~
28 ~~health care licensure requirements of this state is acceptable~~
29 ~~in fulfillment of the requirements of paragraph (a).~~

30 ~~(d) A provisional registration may be granted to an~~
31 ~~applicant when each individual required by this section to~~

1 ~~undergo background screening has met the standards for the~~
2 ~~Department of Law Enforcement background check, but the agency~~
3 ~~has not yet received background screening results from the~~
4 ~~Federal Bureau of Investigation, or a request for a~~
5 ~~disqualification exemption has been submitted to the agency as~~
6 ~~set forth in chapter 435 but a response has not yet been~~
7 ~~issued. A standard registration may be granted to the~~
8 ~~applicant upon the agency's receipt of a report of the results~~
9 ~~of the Federal Bureau of Investigation background screening~~
10 ~~for each individual required by this section to undergo~~
11 ~~background screening which confirms that all standards have~~
12 ~~been met, or upon the granting of a disqualification exemption~~
13 ~~by the agency as set forth in chapter 435. Any other person~~
14 ~~who is required to undergo level 2 background screening may~~
15 ~~serve in his or her capacity pending the agency's receipt of~~
16 ~~the report from the Federal Bureau of Investigation. However,~~
17 ~~the person may not continue to serve if the report indicates~~
18 ~~any violation of background screening standards and a~~
19 ~~disqualification exemption has not been requested of and~~
20 ~~granted by the agency as set forth in 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 applicant from~~
24 ~~the Medicare or Medicaid programs. Proof of compliance with~~
25 ~~the requirements for disclosure of ownership and control~~
26 ~~interests under the Medicaid or Medicare programs shall be~~
27 ~~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 registration may not be granted to an applicant~~
16 ~~if the applicant or managing employee has been found guilty~~
17 ~~of, regardless of adjudication, or has entered a plea of nolo~~
18 ~~contendere or guilty to, any offense prohibited under the~~
19 ~~level 2 standards for screening set forth in chapter 435,~~
20 ~~unless an exemption from disqualification has been granted by~~
21 ~~the agency as set forth in chapter 435.~~

22 ~~(h) The agency may deny or revoke the registration if~~
23 ~~any 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 had prior action taken against the applicant~~
29 ~~under the Medicaid or Medicare program as set forth in~~
30 ~~paragraph (e).~~

31

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

3 (4)~~(5)~~ Registration shall include the following:

4 (a) A description of the review policies and
5 procedures to be used in evaluating proposed or delivered
6 hospital care.

7 (b) The name, address, and telephone number of the
8 utilization review agent performing utilization review, who
9 shall be at least:

10 1. A licensed practical nurse or licensed registered
11 nurse, or other similarly qualified medical records or health
12 care professionals, for performing initial review when
13 information is necessary from the physician or hospital to
14 determine the medical necessity or appropriateness of hospital
15 services; or

16 2. A licensed physician, or a licensed physician
17 practicing in the field of psychiatry for review of mental
18 health services, for an initial denial determination prior to
19 a final denial determination by the health insurer and which
20 shall include the written evaluation and findings of the
21 reviewing physician.

22 (c) A description of an appeal procedure for patients
23 or health care providers whose services are under review, who
24 may appeal an initial denial determination prior to a final
25 determination by the health insurer with whom the private
26 review agent has contracted. The appeal procedure shall
27 provide for review by a licensed physician, or by a licensed
28 physician practicing in the field of psychiatry for review of
29 mental health services, and shall include the written
30 evaluation and findings of the reviewing physician.

31

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

5 (e) An acknowledgment and agreement that any private
6 review agent which, as a general business practice, fails to
7 adhere to the policies, procedures, and representations made
8 in its application for registration shall have its
9 registration revoked.

10 (f) Disclosure of any incentive payment provision or
11 quota provision which is contained in the agent's contract
12 with a health insurer and is based on reduction or denial of
13 services, reduction of length of stay, or selection of
14 treatment setting.

15 (g) Updates of any material changes to review policies
16 or procedures.

17 ~~(6) The agency may impose fines or suspend or revoke~~
18 ~~the registration of any private review agent in violation of~~
19 ~~this section. Any private review agent failing to register or~~
20 ~~update registration as required by this section shall be~~
21 ~~deemed to be within the jurisdiction of the agency and subject~~
22 ~~to an administrative penalty not to exceed \$1,000. The agency~~
23 ~~may bring actions to enjoin activities of private review~~
24 ~~agents in violation of this section.~~

25 (5)(7) ~~An~~ No insurer may not ~~shall~~ knowingly contract
26 with or utilize a private review agent that ~~which~~ has failed
27 to register as required by this section or ~~which~~ has had a
28 registration revoked by the agency.

29 (6)(8) A private review agent that ~~which~~ operates
30 under contract with the federal or state government for
31 utilization review of patients eligible for hospital or other

1 services under Title XVIII or Title XIX of the Social Security
2 Act is exempt from the provisions of this section for services
3 provided under such contract. A private review agent that
4 ~~which~~ provides utilization review services to the federal or
5 state government and a private insurer shall not be exempt for
6 services provided to nonfederally funded patients. This
7 section shall not apply to persons who perform utilization
8 review services for medically necessary hospital services
9 provided to injured workers pursuant to chapter 440 and shall
10 not apply to self-insurance funds or service companies
11 authorized pursuant to chapter 440 or part VII of chapter 626.

12 (7)~~(9)~~ Facilities licensed under this chapter shall
13 promptly comply with the requests of utilization review agents
14 or insurers which are reasonably necessary to facilitate
15 prompt accomplishment of utilization review activities.

16 (8)~~(10)~~ The agency shall adopt rules to implement the
17 provisions of this section.

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

20 395.1046 Complaint investigation procedures.--

21 (1) In accordance with s. 408.811, the agency shall
22 investigate any complaint against a hospital for any violation
23 of s. 395.1041 that the agency reasonably believes to be
24 legally sufficient. A complaint is legally sufficient if it
25 contains ultimate facts which show that a violation of this
26 chapter, or any rule adopted under this chapter by the agency,
27 has occurred. The agency may investigate, or continue to
28 investigate, and may take appropriate final action on a
29 complaint, even though the original complainant withdraws his
30 or her complaint or otherwise indicates his or her desire not
31 to cause it to be investigated to completion. When an

1 investigation of any person or facility is undertaken, the
2 agency shall notify such person in writing of the
3 investigation and inform the person or facility in writing of
4 the substance, the facts which show that a violation has
5 occurred, and the source of any complaint filed against him or
6 her. The agency may conduct an investigation without
7 notification to any person if the act under investigation is a
8 criminal offense. ~~The agency shall have access to all records
9 necessary for the investigation of the complaint.~~

10 Section 43. Subsections (1), (7), and (8) of section
11 395.1055, Florida Statutes, are amended to read:

12 395.1055 Rules and enforcement.--

13 (1) The agency shall adopt rules pursuant to ss.
14 120.536(1) and 120.54 to implement the provisions of this part
15 and part II of chapter 408, which shall include reasonable and
16 fair minimum standards for ensuring that:

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

21 (b) Infection control, housekeeping, sanitary
22 conditions, and medical record procedures that will adequately
23 protect patient care and safety are established and
24 implemented.

25 (c) A comprehensive emergency management plan is
26 prepared and updated annually. Such standards must be
27 included in the rules adopted by the agency after consulting
28 with the Department of Community Affairs. At a minimum, the
29 rules must provide for plan components that address emergency
30 evacuation transportation; adequate sheltering arrangements;
31 postdisaster activities, including emergency power, food, and

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

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

18 (e) Licensed facility beds conform to minimum space,
19 equipment, and furnishings standards as specified by the
20 department.

21 (f) All hospitals submit such data as necessary to
22 conduct certificate-of-need reviews required under ss.
23 408.031-408.045. Such data shall include, but shall not be
24 limited to, patient origin data, hospital utilization data,
25 type of service reporting, and facility staffing data. The
26 agency shall not collect data that identifies or could
27 disclose the identity of individual patients. The agency shall
28 utilize existing uniform statewide data sources when available
29 and shall minimize reporting costs to hospitals.

30 (g) Each hospital has a quality improvement program
31 designed according to standards established by their current

1 accrediting organization. This program will enhance quality of
2 care and emphasize quality patient outcomes, corrective action
3 for problems, governing board review, and reporting to the
4 agency of standardized data elements necessary to analyze
5 quality of care outcomes. The agency shall use existing data,
6 when available, and shall not duplicate the efforts of other
7 state agencies in order to obtain such data.

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

13 (7)(8) The agency may not adopt any rule governing the
14 design, construction, erection, alteration, modification,
15 repair, or demolition of any public or private hospital,
16 intermediate residential treatment facility, or ambulatory
17 surgical center. It is the intent of the Legislature to
18 preempt that function to the Florida Building Commission and
19 the State Fire Marshal through adoption and maintenance of the
20 Florida Building Code and the Florida Fire Prevention Code.
21 However, the agency shall provide technical assistance to the
22 commission and the State Fire Marshal in updating the
23 construction standards of the Florida Building Code and the
24 Florida Fire Prevention Code which govern hospitals,
25 intermediate residential treatment facilities, and ambulatory
26 surgical centers.

27 Section 44. Section 395.1065, Florida Statutes, is
28 amended to read:

29 395.1065 Criminal and administrative penalties;
30 injunctions; ~~emergency orders~~; moratorium.--

31

1 ~~(1) Any person establishing, conducting, managing, or~~
2 ~~operating any facility without a license under this part is~~
3 ~~guilty of a misdemeanor and, upon conviction, shall be fined~~
4 ~~not more than \$500 for the first offense and not more than~~
5 ~~\$1,000 for each subsequent offense, and each day of continuing~~
6 ~~violation after conviction shall be considered a separate~~
7 ~~offense.~~

8 (1)~~(2)~~(a) The agency may ~~deny, revoke, or suspend a~~
9 ~~license or~~ impose an administrative fine, not to exceed \$1,000
10 per violation, per day, for the violation of any provision of
11 this part, part II of chapter 408, or applicable rules adopted
12 ~~under this part. Each day of violation constitutes a separate~~
13 ~~violation and is subject to a separate fine.~~

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

17 1. The severity of the violation, including the
18 probability that death or serious harm to the health or safety
19 of any person will result or has resulted, the severity of the
20 actual or potential harm, and the extent to which the
21 provisions of this part were violated.

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

24 3. Any previous violations of the licensee.

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

28 (c)~~(d)~~ The agency may impose an administrative fine
29 for the violation of s. 641.3154 or, if sufficient claims due
30 to a provider from a health maintenance organization do not
31 exist to enable the take-back of an overpayment, as provided

1 under s. 641.3155(5), for the violation of s. 641.3155(5). The
2 administrative fine for a violation cited in this paragraph
3 shall be in the amounts specified in s. 641.52(5), and the
4 provisions of paragraph (a) do not apply.

5 (2)~~(3)~~ Notwithstanding the existence or pursuit of any
6 other remedy, the agency may maintain an action in the name of
7 the state for injunction or other process to enforce the
8 provisions of this part, part II of chapter 408, and
9 applicable rules promulgated hereunder.

10 ~~(4) The agency may issue an emergency order~~
11 ~~immediately suspending or revoking a license when it~~
12 ~~determines that any condition in the licensed facility~~
13 ~~presents a clear and present danger to public health and~~
14 ~~safety.~~

15 ~~(5) The agency may impose an immediate moratorium on~~
16 ~~elective admissions to any licensed facility, building, or~~
17 ~~portion thereof, or service, when the agency determines that~~
18 ~~any condition in the facility presents a threat to public~~
19 ~~health or safety.~~

20 (3)~~(6)~~ In seeking to impose penalties against a
21 facility as defined in s. 394.455 for a violation of part I of
22 chapter 394, the agency is authorized to rely on the
23 investigation and findings by the Department of Health in lieu
24 of conducting its own investigation.

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

27 395.10973 Powers and duties of the agency.--It is the
28 function of the agency to:

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

1 Section 46. Section 395.10974, Florida Statutes, is
2 amended to read:

3 395.10974 Health care risk managers; qualifications,
4 licensure, fees.--

5 (1) The requirements of part II of chapter 408 apply
6 to the provision of services that necessitate licensure
7 pursuant to ss. 395.10971-395.10976 and part II of chapter 408
8 and to entities licensed by or applying for such licensure
9 from the Agency for Health Care Administration pursuant to ss.
10 395.10971-395.10976.~~Any person desiring to be licensed as a~~
11 ~~health care risk manager shall submit an application on a form~~
12 ~~provided by the agency.~~In order to qualify for licensure, the
13 applicant shall submit evidence satisfactory to the agency
14 which demonstrates the applicant's competence, by education or
15 experience, in the following areas:

16 (a) Applicable standards of health care risk
17 management.

18 (b) Applicable federal, state, and local health and
19 safety laws and rules.

20 (c) General risk management administration.

21 (d) Patient care.

22 (e) Medical care.

23 (f) Personal and social care.

24 (g) Accident prevention.

25 (h) Departmental organization and management.

26 (i) Community interrelationships.

27 (j) Medical terminology.

28
29 Each applicant for licensure must comply with all provisions
30 of part II of chapter 408, with the exception of ss. 408.809,
31 408.810, and 408.811.The agency may require such additional

1 information, from the applicant or any other person, as may be
2 reasonably required to verify the information contained in the
3 application.

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

7 (a) Is 18 years of age or over;

8 (b) Is a high school graduate or equivalent; and

9 (c)1. Has fulfilled the requirements of a 1-year
10 program or its equivalent in health care risk management
11 training which may be developed or approved by the agency;

12 2. Has completed 2 years of college-level studies
13 which would prepare the applicant for health care risk
14 management, to be further defined by rule; or

15 3. Has obtained 1 year of practical experience in
16 health care risk management.

17 (3) The agency shall issue a license to practice
18 health care risk management to any applicant who qualifies
19 under this section. In accordance with s. 408.805, an
20 applicant or licensee shall pay a fee for each license
21 application submitted under this part and part II of chapter
22 408. The amount of the fees shall be established by rule, as
23 follows:~~and submits~~ an application fee of not more than \$75,
24 ~~a fingerprinting fee of not more than \$75,~~ and a license fee
25 of not more than \$100. ~~The agency shall by rule establish fees~~
26 ~~and procedures for the issuance and cancellation of licenses.~~

27 ~~(4) The agency shall renew a health care risk manager~~
28 ~~license upon receipt of a biennial renewal application and~~
29 ~~fees. The agency shall by rule establish a procedure for the~~
30 ~~biennial renewal of licenses.~~

31

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

3 395.10975 Grounds for denial, ~~suspension~~, or
4 revocation of a health care risk manager's license;
5 administrative fine.--

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

10 (a) Imposition of an administrative fine not to exceed
11 \$2,500 for each count or separate offense.

12 (b) Issuance of a reprimand.

13 (c) Placement of the licensee on probation for a
14 period of time and subject to such conditions as the agency
15 may specify, including requiring the licensee to attend
16 continuing education courses or to work under the supervision
17 of another licensee.

18 Section 48. Subsections (5) and (20) of section
19 400.021, Florida Statutes, are repealed.

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

22 400.022 Residents' rights.--

23 (3) Any violation of the resident's rights set forth
24 in this section shall constitute grounds for action by the
25 agency under the provisions of s. 400.102, s. 400.121, or part
26 II of chapter 408. In order to determine whether the licensee
27 is adequately protecting residents' rights, the licensure
28 ~~annual~~ inspection of the facility shall include private
29 informal conversations with a sample of residents to discuss
30 residents' experiences within the facility with respect to
31 rights specified in this section and general compliance with

1 standards, and consultation with the ombudsman council in the
2 local planning and service area of the Department of Elderly
3 Affairs in which the nursing home is located.

4 Section 50. Paragraph (b) of subsection (1) of section
5 400.051, Florida Statutes, is amended to read:

6 400.051 Homes or institutions exempt from the
7 provisions of this part.--

8 (1) The following shall be exempt from the provisions
9 of this part:

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

12 Section 51. Section 400.062, Florida Statutes, is
13 amended to read:

14 400.062 License required; fee; disposition; display;
15 transfer.--

16 (1) The requirements of part II of chapter 408 apply
17 to the provision of services that necessitate licensure
18 pursuant to this part and part II of chapter 408 and to
19 entities licensed by or applying for such licensure from the
20 Agency for Health Care Administration pursuant to this part.
21 ~~It is unlawful to operate or maintain a facility without first~~
22 ~~obtaining from the agency a license authorizing such~~
23 ~~operation.~~

24 (2) Separate licenses shall be required for facilities
25 maintained in separate premises, even though operated under
26 the same management. However, a separate license shall not be
27 required for separate buildings on the same grounds.

28 (3) In accordance with s. 408.805, an applicant or
29 licensee shall pay a fee for each license application
30 submitted under this part and part II of chapter 408.~~The~~
31 ~~annual license fee required for each license issued under this~~

1 ~~part~~ shall be comprised of two parts. Part I of the license
2 fee shall be the basic license fee. The rate per bed for the
3 basic license fee shall be established biennially ~~annually~~ and
4 shall be ~~\$100~~\$50 per bed unless modified by rule. ~~The agency~~
5 ~~may adjust the per bed licensure fees by the Consumer Price~~
6 ~~index based on the 12 months immediately preceding the~~
7 ~~increase to cover the cost of regulation under this part.~~ Part
8 II of the license fee shall be the resident protection fee,
9 which shall be at the rate of not less than 50 ~~25~~ cents per
10 bed. The rate per bed shall be the minimum rate per bed, and
11 such rate shall remain in effect until the effective date of a
12 rate per bed adopted by rule by the agency pursuant to this
13 part. At such time as the amount on deposit in the Resident
14 Protection Trust Fund is less than \$1 million, the agency may
15 adopt rules to establish a rate which may not exceed \$20 ~~\$10~~
16 per bed. The rate per bed shall revert back to the minimum
17 rate per bed when the amount on deposit in the Resident
18 Protection Trust Fund reaches \$1 million, except that any rate
19 established by rule shall remain in effect until such time as
20 the rate has been equally required for each license issued
21 under this part. Any amount in the fund in excess of \$2
22 million shall revert to the Health Care Trust Fund and may not
23 be expended without prior approval of the Legislature. The
24 agency may prorate the biennial ~~annual~~ license fee for those
25 licenses which it issues under this part for less than 2 years
26 ~~1 year~~. ~~Funds generated by license fees collected in~~
27 ~~accordance with this section shall be deposited in the~~
28 ~~following manner:~~
29 (a) ~~The basic license fee collected shall be deposited~~
30 ~~in the Health Care Trust Fund, established for the sole~~
31 ~~purpose of carrying out this part. When the balance of the~~

1 ~~account established in the Health Care Trust Fund for the~~
2 ~~deposit of fees collected as authorized under this section~~
3 ~~exceeds one-third of the annual cost of regulation under this~~
4 ~~part, the excess shall be used to reduce the licensure fees in~~
5 ~~the next year.~~

6 (b) The resident protection fee collected shall be
7 deposited in the Resident Protection Trust Fund for the sole
8 purpose of paying, in accordance with the provisions of s.
9 400.063, for the appropriate alternate placement, care, and
10 treatment of a resident removed from a nursing home facility
11 on a temporary, emergency basis or for the maintenance and
12 care of residents in a nursing home facility pending removal
13 and alternate placement.

14 (4) Counties or municipalities applying for licenses
15 under this part are exempt from license fees authorized under
16 this section.

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

19 ~~(6) A license shall be valid only in the hands of the~~
20 ~~individual, firm, partnership, association, or corporation to~~
21 ~~whom it is issued and shall not be subject to sale,~~
22 ~~assignment, or other transfer, voluntary or involuntary, nor~~
23 ~~shall a license be valid for any premises other than those for~~
24 ~~which originally issued.~~

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

27 400.063 Resident Protection Trust Fund.--

28 (1) A Resident Protection Trust Fund shall be
29 established for the purpose of collecting and disbursing funds
30 generated from the license fees and administrative fines as
31 provided for in ss. 393.0673(2), 400.062(3) ~~400.062(3)(b)~~,

1 ~~400.111(1)~~, 400.121(2), and 400.23(8). Such funds shall be
2 for the sole purpose of paying for the appropriate alternate
3 placement, care, and treatment of residents who are removed
4 from a facility licensed under this part or a facility
5 specified in s. 393.0678(1) in which the agency determines
6 that existing conditions or practices constitute an immediate
7 danger to the health, safety, or security of the residents.
8 If the agency determines that it is in the best interest of
9 the health, safety, or security of the residents to provide
10 for an orderly removal of the residents from the facility, the
11 agency may utilize such funds to maintain and care for the
12 residents in the facility pending removal and alternative
13 placement. The maintenance and care of the residents shall be
14 under the direction and control of a receiver appointed
15 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds
16 may be expended in an emergency upon a filing of a petition
17 for a receiver, upon the declaration of a state of local
18 emergency pursuant to s. 252.38(3)(a)5., or upon a duly
19 authorized local order of evacuation of a facility by
20 emergency personnel to protect the health and safety of the
21 residents.

22 Section 53. Section 400.071, Florida Statutes, is
23 amended to read:

24 400.071 Application for license.--

25 ~~(1) An application for a license as required by s.~~
26 ~~400.062 shall be made to the agency on forms furnished by it~~
27 ~~and shall be accompanied by the appropriate license fee.~~

28 (1)(2) The application shall be under oath and shall
29 contain the following:

30 ~~(a) The name, address, and social security number of~~
31 ~~the applicant if an individual; if the applicant is a firm,~~

1 ~~partnership, or association, its name, address, and employer~~
2 ~~identification number (EIN), and the name and address of any~~
3 ~~controlling interest; and the name by which the facility is to~~
4 ~~be known.~~

5 ~~(b) The name of any person whose name is required on~~
6 ~~the application under the provisions of paragraph (a) and who~~
7 ~~owns at least a 10-percent interest in any professional~~
8 ~~service, firm, association, partnership, or corporation~~
9 ~~providing goods, leases, or services to the facility for which~~
10 ~~the application is made, and the name and address of the~~
11 ~~professional service, firm, association, partnership, or~~
12 ~~corporation in which such interest is held.~~

13 ~~(c) The location of the facility for which a license~~
14 ~~is sought and an indication, as in the original application,~~
15 ~~that such location conforms to the local zoning ordinances.~~

16 ~~(d) The name of the person or persons under whose~~
17 ~~management or supervision the facility will be conducted and~~
18 ~~the name of the administrator.~~

19 ~~(a)(e)~~ A signed affidavit disclosing any financial or
20 ownership interest that a controlling interest, as defined in
21 s. 408.803, ~~person or entity described in paragraph (a) or~~
22 ~~paragraph (d)~~ has held in the last 5 years in any entity
23 licensed by this state or any other state to provide health or
24 residential care which has closed voluntarily or
25 involuntarily; has filed for bankruptcy; has had a receiver
26 appointed; has had a license denied, suspended, or revoked; or
27 has had an injunction issued against it which was initiated by
28 a regulatory agency. The affidavit must disclose the reason
29 any such entity was closed, whether voluntarily or
30 involuntarily.

31

1 **(b)**~~(f)~~ The total number of beds and the total number
2 of Medicare and Medicaid certified beds.

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

17 **(d)**~~(h)~~ Copies of any civil verdict or judgment
18 involving the applicant rendered within the 10 years preceding
19 the application, relating to medical negligence, violation of
20 residents' rights, or wrongful death. As a condition of
21 licensure, the licensee agrees to provide to the agency copies
22 of any new verdict or judgment involving the applicant,
23 relating to such matters, within 30 days after filing with the
24 clerk of the court. The information required in this
25 paragraph shall be maintained in the facility's licensure file
26 and in an agency database which is available as a public
27 record.

28 ~~(3) The applicant shall submit evidence which~~
29 ~~establishes the good moral character of the applicant,~~
30 ~~manager, supervisor, and administrator. No applicant, if the~~
31 ~~applicant is an individual; no member of a board of directors~~

1 ~~or officer of an applicant, if the applicant is a firm,~~
2 ~~partnership, association, or corporation; and no licensed~~
3 ~~nursing home administrator shall have been convicted, or found~~
4 ~~guilty, regardless of adjudication, of a crime in any~~
5 ~~jurisdiction which affects or may potentially affect residents~~
6 ~~in the facility.~~

7 ~~(4) Each applicant for licensure must comply with the~~
8 ~~following requirements:~~

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

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

25 ~~(c) Proof of compliance with the level 2 background~~
26 ~~screening requirements of chapter 435 which has been submitted~~
27 ~~within the previous 5 years in compliance with any other~~
28 ~~health care or assisted living licensure requirements of this~~
29 ~~state is acceptable in fulfillment of paragraph (a). Proof of~~
30 ~~compliance with background screening which has been submitted~~
31 ~~within the previous 5 years to fulfill the requirements of the~~

1 ~~Financial Services Commission and the Office of Insurance~~
2 ~~Regulation pursuant to chapter 651 as part of an application~~
3 ~~for a certificate of authority to operate a continuing care~~
4 ~~retirement community is acceptable in fulfillment of the~~
5 ~~Department of Law Enforcement and Federal Bureau of~~
6 ~~Investigation background check.~~

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

29 ~~(e) Each applicant must submit to the agency, with its~~
30 ~~application, a description and explanation of any exclusions,~~
31 ~~permanent suspensions, or terminations of the applicant from~~

1 ~~the Medicare or Medicaid programs. Proof of compliance with~~
2 ~~disclosure of ownership and control interest requirements of~~
3 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
4 ~~this submission.~~

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

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

25 ~~(5) The applicant shall furnish satisfactory proof of~~
26 ~~financial ability to operate and conduct the nursing home in~~
27 ~~accordance with the requirements of this part and all rules~~
28 ~~adopted under this part, and the agency shall establish~~
29 ~~standards for this purpose, including information reported~~
30 ~~under paragraph (2)(e). The agency also shall establish~~
31 ~~documentation requirements, to be completed by each applicant,~~

1 ~~that show anticipated facility revenues and expenditures, the~~
2 ~~basis for financing the anticipated cash-flow requirements of~~
3 ~~the facility, and an applicant's access to contingency~~
4 ~~financing.~~

5 (2)~~(6)~~ If the applicant offers continuing care
6 agreements as defined in chapter 651, proof shall be furnished
7 that such applicant has obtained a certificate of authority as
8 required for operation under that chapter.

9 (3)~~(7)~~ As a condition of licensure, each licensee,
10 except one offering continuing care agreements as defined in
11 chapter 651, must agree to accept recipients of Title XIX of
12 the Social Security Act on a temporary, emergency basis. The
13 persons whom the agency may require such licensees to accept
14 are those recipients of Title XIX of the Social Security Act
15 who are residing in a facility in which existing conditions
16 constitute an immediate danger to the health, safety, or
17 security of the residents of the facility.

18 (4)~~(8)~~ ~~The agency may not issue a license to a nursing~~
19 ~~home that fails to receive a certificate of need under the~~
20 ~~provisions of ss. 408.031-408.045.~~ It is the intent of the
21 Legislature that, in reviewing a certificate-of-need
22 application to add beds to an existing nursing home facility,
23 preference be given to the application of a licensee who has
24 been awarded a Gold Seal as provided for in s. 400.235, if the
25 applicant otherwise meets the review criteria specified in s.
26 408.035.

27 (5)~~(9)~~ The agency may develop an abbreviated survey
28 for licensure renewal applicable to a licensee that has
29 continuously operated as a nursing facility since 1991 or
30 earlier, has operated under the same management for at least
31

1 the preceding 30 months, and has had during the preceding 30
2 months no class I or class II deficiencies.

3 (6)~~(10)~~ The agency may issue an inactive license to a
4 nursing home that will be temporarily unable to provide
5 services but that is reasonably expected to resume services.
6 Such designation may be made for a period not to exceed 12
7 months but may be renewed by the agency for up to 6 additional
8 months upon demonstration by the licensee of the facility's
9 progress toward reopening. Any request by a licensee that a
10 nursing home become inactive or extend the inactive period
11 must be submitted to the agency, accompanied by appropriate
12 licensure fees, and approved by the agency prior to initiating
13 any suspension of service or notifying residents. The agency
14 may not accept a request for an inactive license if the
15 facility has initiated any suspension of services, notified
16 residents, or initiated closure of the facility. Upon agency
17 approval, the nursing home shall notify residents of any
18 necessary discharge or transfer as provided in s. 400.0255.
19 The end of the inactive period is the licensure expiration
20 date and all licensure fees must be current, paid in full, and
21 may be prorated. Reactivation of an inactive license requires
22 the approval of a renewal application, including payment of
23 licensure fees and inspections by the agency which indicate
24 that all requirements of this part, part II of chapter 408,
25 and applicable rules have been met.

26 (7)~~(11)~~ As a condition of licensure, each facility
27 must establish and submit with its application a plan for
28 quality assurance and for conducting risk management.

29 ~~(12) The applicant must provide the agency with proof~~
30 ~~of a legal right to occupy the property before a license may~~
31 ~~be issued. Proof may include, but is not limited to, copies of~~

1 ~~warranty deeds, lease or rental agreements, contracts for~~
2 ~~deeds, or quitclaim deeds.~~

3 Section 54. Section 400.102, Florida Statutes, is
4 amended to read:

5 400.102 Action by agency against licensee; grounds.--

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

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

11 (1)(b) Misappropriation or conversion of the property
12 of a resident of the facility;

13 (2)(c) Failure to follow the criteria and procedures
14 provided under part I of chapter 394 relating to the
15 transportation, voluntary admission, and involuntary
16 examination of a nursing home resident or;

17 ~~(d) Violation of provisions of this part or rules~~
18 ~~adopted under this part;~~

19 (3)(e) Fraudulent altering, defacing, or falsifying
20 any medical or nursing home records, or causing or procuring
21 any of these offenses to be committed. or

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

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

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

28 ~~(b) In the case of an applicant for relicensure or a~~
29 ~~current licensee, administrative action as provided in s.~~
30 ~~400.121 or injunctive action as authorized by s. 400.125.~~

31

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

3 Section 55. Section 400.111, Florida Statutes, is
4 amended to read:

5 400.111 Renewal ~~Expiration~~ of license; ~~renewal~~.--

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

26 ~~(2) A licensee against whom a revocation or suspension~~
27 ~~proceeding, or any judicial proceeding instituted by the~~
28 ~~agency under this part, is pending at the time of license~~
29 ~~renewal may be issued a temporary license effective until~~
30 ~~final disposition by the agency of such proceeding. If~~
31 ~~judicial relief is sought from the aforesaid administrative~~

1 ~~order, the court having jurisdiction may issue such orders~~
2 ~~regarding the issuance of a temporary permit during the~~
3 ~~pendency of the judicial proceeding.~~

4 ~~(3) The agency may not renew a license if the~~
5 ~~applicant has failed to pay any fines assessed by final order~~
6 ~~of the agency or final order of the Health Care Financing~~
7 ~~Administration under requirements for federal certification.~~
8 ~~The agency may renew the license of an applicant following the~~
9 ~~assessment of a fine by final order if such fine has been paid~~
10 ~~into an escrow account pending an appeal of a final order.~~

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

23 Section 56. Subsections (2) and (5) of section
24 400.1183, Florida Statutes, are amended to read:

25 400.1183 Resident grievance procedures.--

26 (2) Each facility shall maintain records of all
27 grievances and shall report ~~annually~~ to the agency at the time
28 of relicensure the total number of grievances handled, a
29 categorization of the cases underlying the grievances, and the
30 final disposition of the grievances.

31

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

4 Section 57. Section 400.121, Florida Statutes, is
5 amended to read:

6 400.121 Denial or, ~~suspension~~, revocation of license;
7 ~~moratorium on admissions~~; administrative fines; procedure;
8 order to increase staffing.--

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

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

15 (b) A violation of any provision of this part, part II
16 of chapter 408, or applicable rule; or ~~A demonstrated pattern~~
17 ~~of deficient practice;~~

18 ~~(c) Failure to pay any outstanding fines assessed by~~
19 ~~final order of the agency or final order of the Health Care~~
20 ~~Financing Administration pursuant to requirements for federal~~
21 ~~certification. The agency may renew or approve the license of~~
22 ~~an applicant following the assessment of a fine by final order~~
23 ~~if such fine has been paid into an escrow account pending an~~
24 ~~appeal of a final order;~~

25 ~~(d) Exclusion from the Medicare or Medicaid program;~~
26 ~~or~~

27 (b)(e) An adverse action by a regulatory agency
28 against any other licensed facility that has a common
29 controlling interest with the licensee or applicant against
30 whom the action under this section is being brought. If the
31 adverse action involves solely the management company, the

1 applicant or licensee shall be given 30 days to remedy before
2 final action is taken. If the adverse action is based solely
3 upon actions by a controlling interest, the applicant or
4 licensee may present factors in mitigation of any proposed
5 penalty based upon a showing that such penalty is
6 inappropriate under the circumstances.

7
8 All hearings shall be held within the county in which the
9 licensee or applicant operates or applies for a license to
10 operate a facility as defined herein.

11 (2) Except as provided in s. 400.23(8), a \$500 fine
12 shall be imposed for each violation. Each day a violation of
13 this part occurs constitutes a separate violation and is
14 subject to a separate fine, but in no event may any fine
15 aggregate more than \$5,000. A fine may be levied pursuant to
16 this section in lieu of and notwithstanding the provisions of
17 s. 400.23. Fines paid shall be deposited in the Resident
18 Protection Trust Fund and expended as provided in s. 400.063.

19 (3) The agency shall revoke or deny a nursing home
20 license if the licensee or controlling interest operates a
21 facility in this state that:

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

25 (b) Is conditionally licensed for 180 or more
26 continuous days;

27 (c) Is cited for two class I deficiencies arising from
28 unrelated circumstances during the same survey or
29 investigation; or

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

1
2 The licensee may present factors in mitigation of revocation,
3 and the agency may make a determination not to revoke a
4 license based upon a showing that revocation is inappropriate
5 under the circumstances.

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

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

14 (4)(b) Where the agency has placed a moratorium ~~on~~
15 ~~admissions~~ on any facility two times within a 7-year period,
16 the agency may revoke ~~suspend~~ the license of the nursing home
17 ~~and the facility's management company, if any. During the~~
18 ~~suspension, the agency shall take the facility into~~
19 ~~receivership and shall operate the facility.~~

20 (5)(6) An action taken by the agency to deny, ~~suspend,~~
21 or revoke a facility's license under this part shall be heard
22 by the Division of Administrative Hearings of the Department
23 of Management Services within 60 days after the assignment of
24 an administrative law judge, unless the time limitation is
25 waived by both parties. The administrative law judge must
26 render a decision within 30 days after receipt of a proposed
27 recommended order.

28 (6)(7) The agency is authorized to require a facility
29 to increase staffing beyond the minimum required by law, if
30 the agency has taken administrative action against the
31 facility for care-related deficiencies directly attributable

1 to insufficient staff. Under such circumstances, the facility
2 may request an expedited interim rate increase. The agency
3 shall process the request within 10 days after receipt of all
4 required documentation from the facility. A facility that
5 fails to maintain the required increased staffing is subject
6 to a fine of \$500 per day for each day the staffing is below
7 the level required by the agency.

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

12 (7)~~(9)~~ Notwithstanding any other provision of law to
13 the contrary, agency action in an administrative proceeding
14 under this section may be overcome by the licensee upon a
15 showing by a preponderance of the evidence to the contrary.

16 (8)~~(10)~~ In addition to any other sanction imposed
17 under this part, in any final order that imposes sanctions,
18 the agency may assess costs related to the investigation and
19 prosecution of the case. Payment of agency costs shall be
20 deposited into the Health Care Trust Fund.

21 Section 58. Section 400.125, Florida Statutes, is
22 repealed.

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

25 400.141 Administration and management of nursing home
26 facilities.--Every licensed facility shall comply with all
27 applicable standards and rules of the agency and shall:

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

1 (15)(a) At the end of each calendar quarter, submit
2 ~~semiannually~~ to the agency, ~~or more frequently if requested by~~
3 ~~the agency~~, information regarding facility staff-to-resident
4 ratios, staff turnover, and staff stability, including
5 information regarding certified nursing assistants, licensed
6 nurses, the director of nursing, and the facility
7 administrator. For purposes of this reporting:

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

12 2.(b) Staff turnover must be reported for the most
13 recent 12-month period ending on the last workday of the most
14 recent calendar quarter prior to the date the information is
15 submitted. The turnover rate must be computed quarterly, with
16 the annual rate being the cumulative sum of the quarterly
17 rates. The turnover rate is the total number of terminations
18 or separations experienced during the quarter, excluding any
19 employee terminated during a probationary period of 3 months
20 or less, divided by the total number of staff employed at the
21 end of the period for which the rate is computed, and
22 expressed as a percentage.

23 3.(c) The formula for determining staff stability is
24 the total number of employees that have been employed for more
25 than 12 months, divided by the total number of employees
26 employed at the end of the most recent calendar quarter, and
27 expressed as a percentage.

28 (b)(d) A nursing facility that has failed to comply
29 with state minimum-staffing requirements for 2 consecutive
30 days is prohibited from accepting new admissions until the
31 facility has achieved the minimum-staffing requirements for a

1 period of 6 consecutive days. For the purposes of this
2 paragraph, any person who was a resident of the facility and
3 was absent from the facility for the purpose of receiving
4 medical care at a separate location or was on a leave of
5 absence is not considered a new admission. Failure to impose
6 such an admissions moratorium constitutes a class II
7 deficiency.

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

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

17
18 Nothing in this section shall limit the agency's ability to
19 impose a deficiency or take other actions if a facility does
20 not have enough staff to meet the residents' needs.

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

24 (20) Maintain general and professional liability
25 insurance coverage in accordance with part II of chapter 408
26 which ~~that~~ is in force at all times. In lieu of general and
27 professional liability insurance coverage, a state-designated
28 teaching nursing home and its affiliated assisted living
29 facilities created under s. 430.80 may demonstrate proof of
30 financial responsibility as provided in s. 430.80(3)(h); the

31

1 exception provided in this paragraph shall expire July 1,
2 2005.

3

4 Facilities that have been awarded a Gold Seal under the
5 program established in s. 400.235 may develop a plan to
6 provide certified nursing assistant training as prescribed by
7 federal regulations and state rules and may apply to the
8 agency for approval of their program.

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

11 400.17 Bribes, kickbacks, certain solicitations
12 prohibited.--

13 (4) Solicitation of contributions of any kind in a
14 threatening, coercive, or unduly forceful manner by or on
15 behalf of a nursing home by any agent, employee, owner, or
16 representative of a nursing home shall be grounds for denial,
17 ~~suspension~~, or revocation of the license for any nursing home
18 on behalf of which such contributions were solicited.

19 (5) The admission, maintenance, or treatment of a
20 nursing home resident whose care is supported in whole or in
21 part by state funds may not be made conditional upon the
22 receipt of any manner of contribution or donation from any
23 person. However, this may not be construed to prohibit the
24 offer or receipt of contributions or donations to a nursing
25 home which are not related to the care of a specific resident.
26 Contributions solicited or received in violation of this
27 subsection shall be grounds for denial, ~~suspension~~, or
28 revocation of a license for any nursing home on behalf of
29 which such contributions were solicited.

30 Section 61. Section 400.179, Florida Statutes, is
31 amended to read:

1 400.179 ~~Sale or transfer of ownership of a nursing~~
2 ~~facility.~~Liability for Medicaid underpayments and
3 overpayments.--

4 (1) It is the intent of the Legislature to protect the
5 rights of nursing home residents and the security of public
6 funds when a nursing facility is sold or the ownership is
7 transferred.

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

12 ~~(3) The transferor shall notify the agency in writing~~
13 ~~at least 90 days prior to the date of transfer of ownership.~~
14 ~~The transferor shall be responsible and liable for the lawful~~
15 ~~operation of the nursing facility and the welfare of the~~
16 ~~residents domiciled in the facility until the date the~~
17 ~~transferee is licensed by the agency. The transferor shall be~~
18 ~~liable for any and all penalties imposed against the facility~~
19 ~~for violations occurring prior to the date of transfer of~~
20 ~~ownership.~~

21 ~~(4) The transferor shall, prior to transfer of~~
22 ~~ownership, repay or make arrangements to repay to the agency~~
23 ~~or the Department of Children and Family Services any amounts~~
24 ~~owed to the agency or the department. Should the transferor~~
25 ~~fail to repay or make arrangements to repay the amounts owed~~
26 ~~to the agency or the department prior to the transfer of~~
27 ~~ownership, the issuance of a license to the transferee shall~~
28 ~~be delayed until repayment or until arrangements for repayment~~
29 ~~are made.~~

30 (2)~~(5)~~ Because any transfer of a nursing facility may
31 expose the fact that Medicaid may have underpaid or overpaid

1 the transferor, and because in most instances, any such
2 underpayment or overpayment can only be determined following a
3 formal field audit, the liabilities for any such underpayments
4 or overpayments shall be as follows:

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

8 (b) Without regard to whether the transferor had
9 leased or owned the nursing facility, the transferor shall
10 remain liable to the Medicaid program for all Medicaid
11 overpayments received during the transferor's period of
12 operation of the facility, regardless of when determined.

13 (c) Where the facility transfer takes any form of a
14 sale of assets, in addition to the transferor's continuing
15 liability for any such overpayments, if the transferor fails
16 to meet these obligations, the transferee shall be liable for
17 all liabilities that can be readily identifiable 90 days in
18 advance of the transfer. Such liability shall continue in
19 succession until the debt is ultimately paid or otherwise
20 resolved. It shall be the burden of the transferee to
21 determine the amount of all such readily identifiable
22 overpayments from the Agency for Health Care Administration,
23 and the agency shall cooperate in every way with the
24 identification of such amounts. Readily identifiable
25 overpayments shall include overpayments that will result from,
26 but not be limited to:

- 27 1. Medicaid rate changes or adjustments;
28 2. Any depreciation recapture;
29 3. Any recapture of fair rental value system indexing;
30 or
31 4. Audits completed by the agency.

1
2 The transferor shall remain liable for any such Medicaid
3 overpayments that were not readily identifiable 90 days in
4 advance of the nursing facility transfer.

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

7 1. The transferee shall, as a condition to being
8 issued a license by the agency, acquire, maintain, and provide
9 proof to the agency of a bond with a term of 30 months,
10 renewable annually, in an amount not less than the total of 3
11 months Medicaid payments to the facility computed on the basis
12 of the preceding 12-month average Medicaid payments to the
13 facility.

14 2. A leasehold licensee may meet the requirements of
15 subparagraph 1. by payment of a nonrefundable fee, paid at
16 initial licensure, paid at the time of any subsequent change
17 of ownership, and paid at the time of any subsequent change of
18 ownership, and paid annually thereafter ~~at the time of any~~
19 ~~subsequent annual license renewal~~, in the amount of 2 percent
20 of the total of 3 months' Medicaid payments to the facility
21 computed on the basis of the preceding 12-month average
22 Medicaid payments to the facility. If a preceding 12-month
23 average is not available, projected Medicaid payments may be
24 used. The fee shall be deposited into the Health Care Trust
25 Fund and shall be accounted for separately as a Medicaid
26 nursing home overpayment account. These fees shall be used at
27 the sole discretion of the agency to repay nursing home
28 Medicaid overpayments. Payment of this fee shall not release
29 the licensee from any liability for any Medicaid overpayments,
30 nor shall payment bar the agency from seeking to recoup
31 overpayments from the licensee and any other liable party. As

1 a condition of exercising this lease bond alternative,
2 licensees paying this fee must maintain an existing lease bond
3 through the end of the 30-month term period of that bond. The
4 agency is herein granted specific authority to promulgate all
5 rules pertaining to the administration and management of this
6 account, including withdrawals from the account, subject to
7 federal review and approval. This provision shall take effect
8 upon becoming law and shall apply to any leasehold license
9 application.

10 a. The financial viability of the Medicaid nursing
11 home overpayment account shall be determined by the agency
12 through annual review of the account balance and the amount of
13 total outstanding, unpaid Medicaid overpayments owing from
14 leasehold licensees to the agency as determined by final
15 agency audits.

16 b. The agency, in consultation with the Florida Health
17 Care Association and the Florida Association of Homes for the
18 Aging, shall study and make recommendations on the minimum
19 amount to be held in reserve to protect against Medicaid
20 overpayments to leasehold licensees and on the issue of
21 successor liability for Medicaid overpayments upon sale or
22 transfer of ownership of a nursing facility. The agency shall
23 submit the findings and recommendations of the study to the
24 Governor, the President of the Senate, and the Speaker of the
25 House of Representatives by January 1, 2003.

26 3. The leasehold licensee may meet the bond
27 requirement through other arrangements acceptable to the
28 agency. The agency is herein granted specific authority to
29 promulgate rules pertaining to lease bond arrangements.

30 4. All existing nursing facility licensees, operating
31 the facility as a leasehold, shall acquire, maintain, and

1 provide proof to the agency of the 30-month bond required in
2 subparagraph 1., above, on and after July 1, 1993, for each
3 license renewal.

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

9 6. Any failure of the nursing facility licensee
10 ~~operator~~ to acquire, maintain, renew annually, or provide
11 proof to the agency shall be grounds for the agency to deny
12 ~~or, cancel, revoke, or suspend~~ the facility license to operate
13 such facility and to take any further action, including, but
14 not limited to, enjoining the facility, asserting a moratorium
15 pursuant to part II of chapter 408, or applying for a
16 receiver, deemed necessary to ensure compliance with this
17 section and to safeguard and protect the health, safety, and
18 welfare of the facility's residents. A lease agreement
19 required as a condition of bond financing or refinancing under
20 s. 154.213 by a health facilities authority or required under
21 s. 159.30 by a county or municipality is not a leasehold for
22 purposes of this paragraph and is not subject to the bond
23 requirement of this paragraph.

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

26 400.18 Closing of nursing facility.--

27 (1) ~~Whenever a licensee voluntarily discontinues~~
28 ~~operation, and during the period when it is preparing for such~~
29 ~~discontinuance, it shall inform the agency not less than 90~~
30 ~~days prior to the discontinuance of operation.~~The licensee
31 ~~also~~ shall inform the resident or the next of kin, legal

1 representative, or agency acting on behalf of the resident of
2 the fact, and the proposed time, of ~~such~~ discontinuance of
3 operation and give at least 90 days' notice so that suitable
4 arrangements may be made for the transfer and care of the
5 resident. In the event any resident has no such person to
6 represent him or her, the licensee shall be responsible for
7 securing a suitable transfer of the resident before the
8 discontinuance of operation. The agency shall be responsible
9 for arranging for the transfer of those residents requiring
10 transfer who are receiving assistance under the Medicaid
11 program.

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

15 Section 63. Subsections (1), (2), and (3) of section
16 400.19, Florida Statutes, are amended to read:

17 400.19 Right of entry and inspection.--

18 (1) In accordance with part II of chapter 408, the
19 agency and any duly designated officer or employee thereof or
20 a member of the State Long-Term Care Ombudsman Council or the
21 local long-term care ombudsman council shall have the right to
22 enter upon and into the premises of any facility licensed
23 pursuant to this part, or any distinct nursing home unit of a
24 hospital licensed under chapter 395 or any freestanding
25 facility licensed under chapter 395 that provides extended
26 care or other long-term care services, at any reasonable time
27 in order to determine the state of compliance with the
28 provisions of this part and rules in force pursuant thereto.
29 ~~The right of entry and inspection shall also extend to any~~
30 ~~premises which the agency has reason to believe is being~~
31 ~~operated or maintained as a facility without a license, but no~~

1 ~~such entry or inspection of any premises shall be made without~~
2 ~~the permission of the owner or person in charge thereof,~~
3 ~~unless a warrant is first obtained from the circuit court~~
4 ~~authorizing same. Any application for a facility license or~~
5 ~~renewal thereof, made pursuant to this part, shall constitute~~
6 ~~permission for and complete acquiescence in any entry or~~
7 ~~inspection of the premises for which the license is sought, in~~
8 ~~order to facilitate verification of the information submitted~~
9 ~~on or in connection with the application; to discover,~~
10 ~~investigate, and determine the existence of abuse or neglect;~~
11 ~~or to elicit, receive, respond to, and resolve complaints. The~~
12 agency shall, within 60 days after receipt of a complaint made
13 by a resident or resident's representative, complete its
14 investigation and provide to the complainant its findings and
15 resolution.

16 (2) The agency shall coordinate nursing home facility
17 licensing activities and responsibilities of any duly
18 designated officer or employee involved in nursing home
19 facility inspection to assure necessary, equitable, and
20 consistent supervision of inspection personnel without
21 unnecessary duplication of inspections, consultation services,
22 or complaint investigations. ~~To facilitate such coordination,~~
23 ~~all rules promulgated by the agency pursuant to this part~~
24 ~~shall be distributed to nursing homes licensed under s.~~
25 ~~400.062 30 days prior to implementation. This requirement~~
26 ~~does not apply to emergency rules.~~

27 (3) The agency shall every 15 months conduct at least
28 one unannounced inspection to determine compliance by the
29 licensee with statutes, and with rules promulgated under the
30 provisions of those statutes, governing minimum standards of
31 construction, quality and adequacy of care, and rights of

1 residents. The survey shall be conducted every 6 months for
2 the next 2-year period if the facility has been cited for a
3 class I deficiency, has been cited for two or more class II
4 deficiencies arising from separate surveys or investigations
5 within a 60-day period, or has had three or more substantiated
6 complaints within a 6-month period, each resulting in at least
7 one class I or class II deficiency. In addition to any other
8 fees or fines in this part, the agency shall assess a fine for
9 each facility that is subject to the 6-month survey cycle. The
10 fine for the 2-year period shall be \$6,000, ~~one-half to be~~
11 ~~paid at the completion of each survey.~~ The agency may adjust
12 this fine by the change in the Consumer Price Index, based on
13 the 12 months immediately preceding the increase, to cover the
14 cost of the additional surveys. The agency shall verify
15 through subsequent inspection that any deficiency identified
16 during ~~the annual~~ inspection is corrected. However, the
17 agency may verify the correction of a ~~class III or~~ class IV
18 deficiency unrelated to resident rights or resident care
19 without reinspecting the facility if adequate written
20 documentation has been received from the facility, which
21 provides assurance that the deficiency has been corrected. The
22 giving or causing to be given of advance notice of such
23 unannounced inspections by an employee of the agency to any
24 unauthorized person shall constitute cause for suspension of
25 not fewer than 5 working days according to the provisions of
26 chapter 110.

27 Section 64. Section 400.191, Florida Statutes, is
28 amended to read:

29 400.191 Availability, distribution, and posting of
30 reports and records.--

31

1 (1) The agency shall provide information to the public
2 about all of the licensed nursing home facilities operating in
3 the state. The agency shall, within 60 days after an ~~annual~~
4 inspection visit or within 30 days after any interim visit to
5 a facility, send copies of the inspection reports to the local
6 long-term care ombudsman council, the agency's local office,
7 and a public library or the county seat for the county in
8 which the facility is located. The agency may provide
9 electronic access to inspection reports as a substitute for
10 sending copies.

11 (2) The agency shall publish the Guide to Nursing
12 Homes in Florida ~~provide additional information~~ in
13 consumer-friendly printed and electronic formats to assist
14 consumers and their families in comparing and evaluating
15 nursing home facilities.

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

20 1. A list by name and address of all nursing home
21 facilities in this state, including any prior name a facility
22 was known by during the previous 12-month period.

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

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

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

31

1 5. The total number of beds in each facility and the
2 most recently available occupancy levels.

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

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

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

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

13 10. Recreational and other programs available at each
14 facility.

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

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

20 13. Survey and deficiency information contained on the
21 Online Survey Certification and Reporting (OSCAR) system of
22 the federal Centers for Medicare and Medicaid Services Health
23 Care Financing Administration, including recertification
24 ~~annual~~ survey, revisit, and complaint survey information, for
25 each facility for the past 30 ~~45~~ months. For noncertified
26 nursing homes, state survey and deficiency information,
27 including licensure ~~annual~~ survey, revisit, and complaint
28 survey information for the past 30 ~~45~~ months shall be
29 provided.

30 14. A summary of the Online Survey Certification and
31 Reporting (OSCAR) data for each facility over the past 30 ~~45~~

1 months. Such summary may include a score, rating, or
2 comparison ranking with respect to other facilities based on
3 the number of citations received by the facility of
4 recertification ~~annual~~, revisit, and complaint surveys; the
5 severity and scope of the citations; and the number of ~~annual~~
6 recertification surveys the facility has had during the past
7 30 ~~45~~ months. The score, rating, or comparison ranking may be
8 presented in either numeric or symbolic form for the intended
9 consumer audience.

10 (b) The agency shall provide the following information
11 in printed form:

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

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

16 3. The current owner or owners of the facility's
17 license and the year that entity became the owner of the
18 license.

19 4. The total number of beds, and of private and
20 semiprivate rooms, in each facility.

21 5. The religious affiliation, if any, of each
22 facility.

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

27 7. The languages spoken by the administrator and staff
28 of each facility.

29 8. Whether or not each facility accepts Medicare or
30 Medicaid recipients or insurance, health maintenance

31

1 organization, Veterans Administration, CHAMPUS program, or
2 workers' compensation coverage.

3 9. Recreational programs, special care units, and
4 other programs available at each facility.

5 10. The Internet address for the site where more
6 detailed information can be seen.

7 11. A statement advising consumers that each facility
8 will have its own policies and procedures related to
9 protecting resident property.

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

21 (c) For purposes of this subsection, references to the
22 Online Survey Certification and Reporting (OSCAR) system shall
23 refer to any future system that the Centers for Medicare and
24 Medicaid Services ~~Health Care Financing Administration~~
25 develops to replace the current OSCAR system.

26 (d) The agency may provide the following additional
27 information on an Internet site or in printed form as the
28 information becomes available:

- 29 1. The licensure status history of each facility.
30 2. The rating history of each facility.

31

1 3. The regulatory history of each facility, which may
2 include federal sanctions, state sanctions, federal fines,
3 state fines, and other actions.

4 4. Whether the facility currently possesses the Gold
5 Seal designation awarded pursuant to s. 400.235.

6 5. Internet links to the Internet sites of the
7 facilities or their affiliates.

8 (3) Each nursing home facility licensee shall maintain
9 as public information, available upon request, records of all
10 cost and inspection reports pertaining to that facility that
11 have been filed with, or issued by, any governmental agency.
12 Copies of such reports shall be retained in such records for
13 not less than 5 years from the date the reports are filed or
14 issued.

15 (a) The agency shall quarterly publish in the Guide to
16 Nursing Homes in Florida a "Nursing Home Guide Watch List" to
17 assist consumers in evaluating the quality of nursing home
18 care in Florida. The watch list must identify each facility
19 that met the criteria for a conditional licensure status on
20 any day within the quarter covered by the list and each
21 facility that was operating under bankruptcy protection on any
22 day within the quarter. The watch list must include, but is
23 not limited to, the facility's name, address, and ownership;
24 the county in which the facility operates; the license
25 expiration date; the number of licensed beds; a description of
26 the deficiency causing the facility to be placed on the list;
27 any corrective action taken; and the cumulative number and
28 percentage of days ~~times~~ the facility had a conditional
29 license and was ~~has been~~ on a watch list in the past 30
30 months. The watch list must include a brief description
31 regarding how to choose a nursing home, the categories of

1 licensure, the agency's inspection process, an explanation of
2 terms used in the watch list, and the addresses and phone
3 numbers of the agency's ~~managed care and health quality~~
4 assurance field area offices.

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

10 (4) Any records of a nursing home facility determined
11 by the agency to be necessary and essential to establish
12 lawful compliance with any rules or standards shall be made
13 available to the agency on the premises of the facility and
14 submitted to the agency. Each facility must submit this
15 information electronically when electronic transmission to the
16 agency is available.

17 (5) Every nursing home facility licensee shall:

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

21 1. A concise summary of the last inspection report
22 pertaining to the nursing home and issued by the agency, with
23 references to the page numbers of the full reports, noting any
24 deficiencies found by the agency and the actions taken by the
25 licensee to rectify such deficiencies and indicating in such
26 summaries where the full reports may be inspected in the
27 nursing home.

28 2. A copy of the most recent version of all pages
29 listing the facility in the Guide to Nursing Homes in Florida
30 ~~the Florida Nursing Home Guide Watch List.~~

31

1 (b) Upon request, provide to any person who has
2 completed a written application with an intent to be admitted
3 to, or to any resident of, such nursing home, or to any
4 relative, spouse, or guardian of such person, a copy of the
5 last inspection report pertaining to the nursing home and
6 issued by the agency, provided the person requesting the
7 report agrees to pay a reasonable charge to cover copying
8 costs.

9 (6) The agency may adopt rules as necessary to
10 administer this section.

11 Section 65. Section 400.20, Florida Statutes, is
12 amended to read:

13 400.20 Licensed nursing home administrator
14 required.--A ~~No~~ nursing home may not ~~shall~~ operate except
15 under the supervision of a licensed nursing home
16 administrator, and a ~~no~~ person may not ~~shall~~ be a nursing home
17 administrator unless he or she holds ~~is the holder of~~ a
18 current license as provided in chapter 468.

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

21 400.211 Persons employed as nursing assistants;
22 certification requirement.--

23 (4) When employed by a nursing home facility for a
24 12-month period or longer, a nursing assistant, to maintain
25 certification, shall submit to a performance review every 12
26 months and must receive regular inservice education based on
27 the outcome of such reviews. The inservice training must:

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

- 1 (b) Include, at a minimum:
- 2 1. Techniques for assisting with eating and proper
- 3 feeding;
- 4 2. Principles of adequate nutrition and hydration;
- 5 3. Techniques for assisting and responding to the
- 6 cognitively impaired resident or the resident with difficult
- 7 behaviors;
- 8 4. Techniques for caring for the resident at the
- 9 end-of-life; and
- 10 5. Recognizing changes that place a resident at risk
- 11 for pressure ulcers and falls; and
- 12 (c) Address areas of weakness as determined in nursing
- 13 assistant performance reviews and may address the special
- 14 needs of residents as determined by the nursing home facility
- 15 staff.
- 16
- 17 Costs associated with this training may not be reimbursed from
- 18 additional Medicaid funding through interim rate adjustments.
- 19 Section 67. Subsections (2), (7), and (8) of section
- 20 400.23, Florida Statutes, are amended to read:
- 21 400.23 Rules; evaluation and deficiencies; licensure
- 22 status.--
- 23 (2) Pursuant to the intention of the Legislature, the
- 24 agency, in consultation with the Department of Health and the
- 25 Department of Elderly Affairs, shall adopt and enforce rules
- 26 to implement this part and part II of chapter 408, which shall
- 27 include reasonable and fair criteria in relation to:
- 28 (a) The location of the facility and housing
- 29 conditions that will ensure the health, safety, and comfort of
- 30 residents, including an adequate call system. In making such
- 31 rules, the agency shall be guided by criteria recommended by

1 nationally recognized reputable professional groups and
2 associations with knowledge of such subject matters. The
3 agency shall update or revise such criteria as the need
4 arises. The agency may require alterations to a building if it
5 determines that an existing condition constitutes a distinct
6 hazard to life, health, or safety. In performing any
7 inspections of facilities authorized by this part, the agency
8 may enforce the special-occupancy provisions of the Florida
9 Building Code and the Florida Fire Prevention Code which apply
10 to nursing homes. The agency is directed to provide assistance
11 to the Florida Building Commission in updating the
12 construction standards of the code relative to nursing homes.

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

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

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

24 (e) A uniform accounting system.

25 (f) The care, treatment, and maintenance of residents
26 and measurement of the quality and adequacy thereof, based on
27 rules developed under this chapter and the Omnibus Budget
28 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
29 1987), Title IV (Medicare, Medicaid, and Other Health-Related
30 Programs), Subtitle C (Nursing Home Reform), as amended.

31

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

23 (h) The availability, distribution, and posting of
24 reports and records pursuant to s. 400.191 and the Gold Seal
25 Program pursuant to s. 400.235.

26 (7) The agency shall, at least every 15 months,
27 evaluate all nursing home facilities and make a determination
28 as to the degree of compliance by each licensee with the
29 established rules adopted under this part as a basis for
30 assigning a licensure status to that facility. The agency
31 shall base its evaluation on the most recent inspection

1 report, taking into consideration findings from other official
2 reports, surveys, interviews, investigations, and inspections.
3 The agency shall assign a licensure status of standard or
4 conditional to each nursing home.

5 (a) A standard licensure status means that a facility
6 has no class I or class II deficiencies and has corrected all
7 class III deficiencies within the time established by the
8 agency.

9 (b) A conditional licensure status means that a
10 facility, due to the presence of one or more class I or class
11 II deficiencies, or class III deficiencies not corrected
12 within the time established by the agency, is not in
13 substantial compliance at the time of the survey with criteria
14 established under this part or with rules adopted by the
15 agency. If the facility has no class I, class II, or class
16 III deficiencies at the time of the followup survey, a
17 standard licensure status may be assigned.

18 (c) In evaluating the overall quality of care and
19 services and determining whether the facility will receive a
20 conditional or standard license, the agency shall consider the
21 needs and limitations of residents in the facility and the
22 results of interviews and surveys of a representative sampling
23 of residents, families of residents, ombudsman council members
24 in the planning and service area in which the facility is
25 located, guardians of residents, and staff of the nursing home
26 facility.

27 (d) The current licensure status of each facility must
28 be indicated in bold print on the face of the license. A list
29 of the deficiencies of the facility shall be posted in a
30 prominent place that is in clear and unobstructed public view
31 at or near the place where residents are being admitted to

1 that facility. Licensees receiving a conditional licensure
2 status for a facility shall prepare, within 10 working days
3 after receiving notice of deficiencies, a plan for correction
4 of all deficiencies and shall submit the plan to the agency
5 for approval.

6 ~~(e) 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 ~~(e)(f)~~ The agency shall adopt rules that:

11 1. Establish uniform procedures for the evaluation of
12 facilities.

13 2. Provide criteria in the areas referenced in
14 paragraph (c).

15 3. Address other areas necessary for carrying out the
16 intent of this section.

17 (8) The agency shall adopt rules pursuant to this part
18 and part II of chapter 408 to provide that, when the criteria
19 established under subsection (2) are not met, such
20 deficiencies shall be classified according to the nature and
21 the scope of the deficiency. The scope shall be cited as
22 isolated, patterned, or widespread. An isolated deficiency is
23 a deficiency affecting one or a very limited number of
24 residents, or involving one or a very limited number of staff,
25 or a situation that occurred only occasionally or in a very
26 limited number of locations. A patterned deficiency is a
27 deficiency where more than a very limited number of residents
28 are affected, or more than a very limited number of staff are
29 involved, or the situation has occurred in several locations,
30 or the same resident or residents have been affected by
31 repeated occurrences of the same deficient practice but the

1 effect of the deficient practice is not found to be pervasive
2 throughout the facility. A widespread deficiency is a
3 deficiency in which the problems causing the deficiency are
4 pervasive in the facility or represent systemic failure that
5 has affected or has the potential to affect a large portion of
6 the facility's residents. The agency shall indicate the
7 classification on the face of the notice of deficiencies as
8 follows:

9 (a) A class I deficiency is a deficiency that the
10 agency determines presents a situation in which immediate
11 corrective action is necessary because the facility's
12 noncompliance has caused, or is likely to cause, serious
13 injury, harm, impairment, or death to a resident receiving
14 care in a facility. The condition or practice constituting a
15 class I violation shall be abated or eliminated immediately,
16 unless a fixed period of time, as determined by the agency, is
17 required for correction. A class I deficiency is subject to a
18 civil penalty of \$10,000 for an isolated deficiency, \$12,500
19 for a patterned deficiency, and \$15,000 for a widespread
20 deficiency. The fine amount shall be doubled for each
21 deficiency if the facility was previously cited for one or
22 more class I or class II deficiencies during the last
23 licensure ~~annual~~ inspection or any inspection or complaint
24 investigation since the last licensure ~~annual~~ inspection. A
25 fine must be levied notwithstanding the correction of the
26 deficiency.

27 (b) A class II deficiency is a deficiency that the
28 agency determines has compromised the resident's ability to
29 maintain or reach his or her highest practicable physical,
30 mental, and psychosocial well-being, as defined by an accurate
31 and comprehensive resident assessment, plan of care, and

1 provision of services. A class II deficiency is subject to a
2 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
3 a patterned deficiency, and \$7,500 for a widespread
4 deficiency. The fine amount shall be doubled for each
5 deficiency if the facility was previously cited for one or
6 more class I or class II deficiencies during the last
7 licensure ~~annual~~ inspection or any inspection or complaint
8 investigation since the last licensure ~~annual~~ inspection. A
9 fine shall be levied notwithstanding the correction of the
10 deficiency.

11 (c) A class III deficiency is a deficiency that the
12 agency determines will result in no more than minimal
13 physical, mental, or psychosocial discomfort to the resident
14 or has the potential to compromise the resident's ability to
15 maintain or reach his or her highest practical physical,
16 mental, or psychosocial well-being, as defined by an accurate
17 and comprehensive resident assessment, plan of care, and
18 provision of services. A class III deficiency is subject to a
19 civil penalty of \$1,000 for an isolated deficiency, \$2,000 for
20 a patterned deficiency, and \$3,000 for a widespread
21 deficiency. The fine amount shall be doubled for each
22 deficiency if the facility was previously cited for one or
23 more class I or class II deficiencies during the last
24 licensure ~~annual~~ inspection or any inspection or complaint
25 investigation since the last licensure ~~annual~~ inspection. A
26 citation for a class III deficiency must specify the time
27 within which the deficiency is required to be corrected. If a
28 class III deficiency is corrected within the time specified,
29 no civil penalty shall be imposed.

30 (d) A class IV deficiency is a deficiency that the
31 agency determines has the potential for causing no more than a

1 minor negative impact on the resident. If the class IV
2 deficiency is isolated, no plan of correction is required.

3 Section 68. Subsections (1) and (2) of section
4 400.241, Florida Statutes, are repealed.

5 Section 69. Subsection (5) of section 400.402, Florida
6 Statutes, is repealed and present subsections (12), (14), and
7 (17) of that section are redesignated as subsections (11),
8 (13), and (16), respectively, and amended to read:

9 400.402 Definitions.--When used in this part, the
10 term:

11 ~~(5) "Applicant" means an individual owner,~~
12 ~~corporation, partnership, firm, association, or governmental~~
13 ~~entity that applies for a license.~~

14 (11)~~(12)~~ "Extended congregate care" means acts beyond
15 those authorized in subsection(16)~~(17)~~that may be performed
16 pursuant to part I of chapter 464 by persons licensed
17 thereunder while carrying out their professional duties, and
18 other supportive services which may be specified by rule. The
19 purpose of such services is to enable residents to age in
20 place in a residential environment despite mental or physical
21 limitations that might otherwise disqualify them from
22 residency in a facility licensed under this part.

23 (13)~~(14)~~ "Limited nursing services" means acts that
24 may be performed pursuant to part I of chapter 464 by persons
25 licensed thereunder while carrying out their professional
26 duties but limited to those acts which the agency ~~department~~
27 specifies by rule. Acts which may be specified by rule as
28 allowable limited nursing services shall be for persons who
29 meet the admission criteria established by the agency
30 ~~department~~ for assisted living facilities and shall not be
31 complex enough to require 24-hour nursing supervision and may

1 include such services as the application and care of routine
2 dressings, and care of casts, braces, and splints.

3 (16)~~(17)~~ "Personal services" means direct physical
4 assistance with or supervision of the activities of daily
5 living and the self-administration of medication and other
6 similar services which the agency ~~department~~ may define by
7 rule. "Personal services" shall not be construed to mean the
8 provision of medical, nursing, dental, or mental health
9 services.

10 Section 70. Section 400.407, Florida Statutes, is
11 amended to read:

12 400.407 License required; fee, display.--

13 (1) The requirements of part II of chapter 408 apply
14 to the provision of services that necessitate licensure
15 pursuant to this part and part II of chapter 408 and to
16 entities licensed by or applying for such licensure from the
17 Agency for Health Care Administration pursuant to this part.
18 However, an applicant for licensure is exempt from s.
19 408.810(10). A license issued by the agency is required for an
20 assisted living facility operating in this state.

21 (2) Separate licenses shall be required for facilities
22 maintained in separate premises, even though operated under
23 the same management. A separate license shall not be required
24 for separate buildings on the same grounds.

25 (3) In addition to the requirements of s. 408.806,
26 each ~~any~~ license granted by the agency must state ~~the maximum~~
27 ~~resident capacity of the facility,~~ the type of care for which
28 the license is granted, ~~the date the license is issued, the~~
29 ~~expiration date of the license, and any other information~~
30 ~~deemed necessary by the agency.~~ Licenses shall be issued for
31 one or more of the following categories of care: standard,

1 extended congregate care, limited nursing services, or limited
2 mental health.

3 (a) A standard license shall be issued to facilities
4 providing one or more of the personal services identified in
5 s. 400.402. Such facilities may also employ or contract with a
6 person licensed under part I of chapter 464 to administer
7 medications and perform other tasks as specified in s.
8 400.4255.

9 (b) An extended congregate care license shall be
10 issued to facilities providing, directly or through contract,
11 services beyond those authorized in paragraph (a), including
12 acts performed pursuant to part I of chapter 464 by persons
13 licensed thereunder, and supportive services defined by rule
14 to persons who otherwise would be disqualified from continued
15 residence in a facility licensed under this part.

16 1. In order for extended congregate care services to
17 be provided in a facility licensed under this part, the agency
18 must first determine that all requirements established in law
19 and rule are met and must specifically designate, on the
20 facility's license, that such services may be provided and
21 whether the designation applies to all or part of a facility.
22 Such designation may be made at the time of initial licensure
23 or relicensure, or upon request in writing by a licensee under
24 this part pursuant to s. 408.806. Notification of approval or
25 denial of such request shall be made in accordance with part
26 II of chapter 408 ~~within 90 days after receipt of such request~~
27 ~~and all necessary documentation~~. Existing facilities
28 qualifying to provide extended congregate care services must
29 have maintained a standard license and may not have been
30 subject to administrative sanctions during the previous 2
31 years, or since initial licensure if the facility has been

1 licensed for less than 2 years, for any of the following
2 reasons:

3 a. A class I or class II violation;

4 b. Three or more repeat or recurring class III
5 violations of identical or similar resident care standards as
6 specified in rule from which a pattern of noncompliance is
7 found by the agency;

8 c. Three or more class III violations that were not
9 corrected in accordance with the corrective action plan
10 approved by the agency;

11 d. Violation of resident care standards resulting in a
12 requirement to employ the services of a consultant pharmacist
13 or consultant dietitian;

14 e. Denial, ~~suspension~~, or revocation of a license for
15 another facility under this part in which the applicant for an
16 extended congregate care license has at least 25 percent
17 ownership interest; or

18 f. Imposition of a moratorium ~~on admissions~~ or
19 initiation of injunctive proceedings.

20 2. Facilities that are licensed to provide extended
21 congregate care services shall maintain a written progress
22 report on each person who receives such services, which report
23 describes the type, amount, duration, scope, and outcome of
24 services that are rendered and the general status of the
25 resident's health. A registered nurse, or appropriate
26 designee, representing the agency shall visit such facilities
27 at least quarterly to monitor residents who are receiving
28 extended congregate care services and to determine if the
29 facility is in compliance with this part, part II of chapter
30 408, and ~~with~~ rules that relate to extended congregate care.
31 One of these visits may be in conjunction with the regular

1 survey. The monitoring visits may be provided through
2 contractual arrangements with appropriate community agencies.
3 A registered nurse shall serve as part of the team that
4 inspects such facility. The agency may waive one of the
5 required yearly monitoring visits for a facility that has been
6 licensed for at least 24 months to provide extended congregate
7 care services, if, during the inspection, the registered nurse
8 determines that extended congregate care services are being
9 provided appropriately, and if the facility has no class I or
10 class II violations and no uncorrected class III violations.
11 Before such decision is made, the agency shall consult with
12 the long-term care ombudsman council for the area in which the
13 facility is located to determine if any complaints have been
14 made and substantiated about the quality of services or care.
15 The agency may not waive one of the required yearly monitoring
16 visits if complaints have been made and substantiated.

17 3. Facilities that are licensed to provide extended
18 congregate care services shall:

19 a. Demonstrate the capability to meet unanticipated
20 resident service needs.

21 b. Offer a physical environment that promotes a
22 homelike setting, provides for resident privacy, promotes
23 resident independence, and allows sufficient congregate space
24 as defined by rule.

25 c. Have sufficient staff available, taking into
26 account the physical plant and firesafety features of the
27 building, to assist with the evacuation of residents in an
28 emergency, as necessary.

29 d. Adopt and follow policies and procedures that
30 maximize resident independence, dignity, choice, and
31 decisionmaking to permit residents to age in place to the

1 extent possible, so that moves due to changes in functional
2 status are minimized or avoided.

3 e. Allow residents or, if applicable, a resident's
4 representative, designee, surrogate, guardian, or attorney in
5 fact to make a variety of personal choices, participate in
6 developing service plans, and share responsibility in
7 decisionmaking.

8 f. Implement the concept of managed risk.

9 g. Provide, either directly or through contract, the
10 services of a person licensed pursuant to part I of chapter
11 464.

12 h. In addition to the training mandated in s. 400.452,
13 provide specialized training as defined by rule for facility
14 staff.

15 4. Facilities licensed to provide extended congregate
16 care services are exempt from the criteria for continued
17 residency as set forth in rules adopted under s. 400.441.
18 Facilities so licensed shall adopt their own requirements
19 within guidelines for continued residency set forth ~~by the~~
20 ~~department~~ in rule. However, such facilities may not serve
21 residents who require 24-hour nursing supervision. Facilities
22 licensed to provide extended congregate care services shall
23 provide each resident with a written copy of facility policies
24 governing admission and retention.

25 5. The primary purpose of extended congregate care
26 services is to allow residents, as they become more impaired,
27 the option of remaining in a familiar setting from which they
28 would otherwise be disqualified for continued residency. A
29 facility licensed to provide extended congregate care services
30 may also admit an individual who exceeds the admission
31 criteria for a facility with a standard license, if the

1 individual is determined appropriate for admission to the
2 extended congregate care facility.

3 6. Before admission of an individual to a facility
4 licensed to provide extended congregate care services, the
5 individual must undergo a medical examination as provided in
6 s. 400.426(4) and the facility must develop a preliminary
7 service plan for the individual.

8 7. When a facility can no longer provide or arrange
9 for services in accordance with the resident's service plan
10 and needs and the facility's policy, the facility shall make
11 arrangements for relocating the person in accordance with s.
12 400.428(1)(k).

13 8. Failure to provide extended congregate care
14 services may result in denial of extended congregate care
15 license renewal.

16 9. No later than January 1 of each year, ~~the~~
17 ~~department, in consultation with the agency,~~ shall prepare and
18 submit to the Governor, the President of the Senate, the
19 Speaker of the House of Representatives, and the chairs of
20 appropriate legislative committees, a report on the status of,
21 and recommendations related to, extended congregate care
22 services. The status report must include, but need not be
23 limited to, the following information:

24 a. A description of the facilities licensed to provide
25 such services, including total number of beds licensed under
26 this part.

27 b. The number and characteristics of residents
28 receiving such services.

29 c. The types of services rendered that could not be
30 provided through a standard license.

31

1 d. An analysis of deficiencies cited during licensure
2 inspections.

3 e. The number of residents who required extended
4 congregate care services at admission and the source of
5 admission.

6 f. Recommendations for statutory or regulatory
7 changes.

8 g. The availability of extended congregate care to
9 state clients residing in facilities licensed under this part
10 and in need of additional services, and recommendations for
11 appropriations to subsidize extended congregate care services
12 for such persons.

13 h. Such other information as the department considers
14 appropriate.

15 (c) A limited nursing services license shall be issued
16 to a facility that provides services beyond those authorized
17 in paragraph (a) and as specified in this paragraph.

18 1. In order for limited nursing services to be
19 provided in a facility licensed under this part, the agency
20 must first determine that all requirements established in law
21 and rule are met and must specifically designate, on the
22 facility's license, that such services may be provided. Such
23 designation may be made at the time of initial licensure or
24 relicensure, or upon request in writing by a licensee under
25 this part pursuant to s. 408.806. Notification of approval or
26 denial of such request shall be made in accordance with part
27 II of chapter 408 ~~within 90 days after receipt of such request~~
28 ~~and all necessary documentation~~. Existing facilities
29 qualifying to provide limited nursing services shall have
30 maintained a standard license and may not have been subject to
31 administrative sanctions that affect the health, safety, and

1 welfare of residents for the previous 2 years or since initial
2 licensure if the facility has been licensed for less than 2
3 years.

4 2. Facilities that are licensed to provide limited
5 nursing services shall maintain a written progress report on
6 each person who receives such nursing services, which report
7 describes the type, amount, duration, scope, and outcome of
8 services that are rendered and the general status of the
9 resident's health. A registered nurse representing the agency
10 shall visit such facilities at least twice a year to monitor
11 residents who are receiving limited nursing services and to
12 determine if the facility is in compliance with applicable
13 provisions of this part and with related rules. The monitoring
14 visits may be provided through contractual arrangements with
15 appropriate community agencies. A registered nurse shall also
16 serve as part of the team that inspects such facility.

17 3. A person who receives limited nursing services
18 under this part must meet the admission criteria established
19 by the agency for assisted living facilities. When a resident
20 no longer meets the admission criteria for a facility licensed
21 under this part, arrangements for relocating the person shall
22 be made in accordance with s. 400.428(1)(k), unless the
23 facility is licensed to provide extended congregate care
24 services.

25 (4) 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.

29 (a) The biennial license fee required of a facility is
30 \$300 per license, with an additional fee of \$50 per resident
31 based on the total licensed resident capacity of the facility,

1 except that no additional fee will be assessed for beds
2 designated for recipients of optional state supplementation
3 payments provided for in s. 409.212. The total fee may not
4 exceed \$10,000, no part of which shall be returned to the
5 facility. ~~The agency shall adjust the per bed license fee and~~
6 ~~the total licensure fee annually by not more than the change~~
7 ~~in the consumer price index based on the 12 months immediately~~
8 ~~preceding the increase.~~

9 (b) In addition to the total fee assessed under
10 paragraph (a), the agency shall require facilities that are
11 licensed to provide extended congregate care services under
12 this part to pay an additional fee per licensed facility. The
13 amount of the biennial fee shall be \$400 per license, with an
14 additional fee of \$10 per resident based on the total licensed
15 resident capacity of the facility. No part of this fee shall
16 be returned to the facility. ~~The agency may adjust the per bed~~
17 ~~license fee and the annual license fee once each year by not~~
18 ~~more than the average rate of inflation for the 12 months~~
19 ~~immediately preceding the increase.~~

20 (c) In addition to the total fee assessed under
21 paragraph (a), the agency shall require facilities that are
22 licensed to provide limited nursing services under this part
23 to pay an additional fee per licensed facility. The amount of
24 the biennial fee shall be \$250 per license, with an additional
25 fee of \$10 per resident based on the total licensed resident
26 capacity of the facility. No part of this fee shall be
27 returned to the facility. ~~The agency may adjust the per bed~~
28 ~~license fee and the biennial license fee once each year by not~~
29 ~~more than the average rate of inflation for the 12 months~~
30 ~~immediately preceding the increase.~~

31

1 (5) Counties or municipalities applying for licenses
2 under this part are exempt from the payment of license fees.

3 ~~(6) The license shall be displayed in a conspicuous~~
4 ~~place inside the facility.~~

5 ~~(7) A license shall be valid only in the possession of~~
6 ~~the individual, firm, partnership, association, or corporation~~
7 ~~to which it is issued and shall not be subject to sale,~~
8 ~~assignment, or other transfer, voluntary or involuntary; nor~~
9 ~~shall a license be valid for any premises other than that for~~
10 ~~which originally issued.~~

11 ~~(8) A fee may be charged to a facility requesting a~~
12 ~~duplicate license. The fee shall not exceed the actual cost~~
13 ~~of duplication and postage.~~

14 Section 71. Subsection (1) of section 400.4075,
15 Florida Statutes, is amended to read:

16 400.4075 Limited mental health license.--An assisted
17 living facility that serves three or more mental health
18 residents must obtain a limited mental health license.

19 (1) To obtain a limited mental health license, a
20 facility must hold a standard license as an assisted living
21 facility, must not have any current uncorrected deficiencies
22 or violations, and must ensure that, within 6 months after
23 receiving a limited mental health license, the facility
24 administrator and the staff of the facility who are in direct
25 contact with mental health residents must complete training of
26 no less than 6 hours related to their duties. Such designation
27 may be made at the time of initial licensure or relicensure,
28 or upon request in writing by a licensee under this part
29 pursuant to s. 408.806. Notification of approval or denial of
30 such request shall be made in accordance with part II of
31 chapter 408. The ~~this~~ training required by this subsection

1 shall ~~will~~ be provided by or approved by the Department of
2 Children and Family Services.

3 Section 72. Section 400.408, Florida Statutes, is
4 amended to read:

5 400.408 Unlicensed facilities; referral of person for
6 residency to unlicensed facility; penalties; verification of
7 licensure status.--

8 ~~(1)(a) It is unlawful to own, operate, or maintain an
9 assisted living facility without obtaining a license under
10 this part.~~

11 ~~(b) Except as provided under paragraph (d), any person
12 who owns, operates, or maintains an unlicensed assisted living
13 facility commits a felony of the third degree, punishable as
14 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
15 continued operation is a separate offense.~~

16 ~~(c) Any person found guilty of violating paragraph (a)
17 a second or subsequent time commits a felony of the second
18 degree, punishable as provided under s. 775.082, s. 775.083,
19 or s. 775.084. Each day of continued operation is a separate
20 offense.~~

21 (1)(d) Any person who owns, operates, or maintains an
22 unlicensed assisted living facility due to a change in this
23 part or a modification in ~~department~~ rule within 6 months
24 after the effective date of such change and who, within 10
25 working days after receiving notification from the agency,
26 fails to cease operation or apply for a license under this
27 part commits a felony of the third degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
29 continued operation is a separate offense.

30
31

1 ~~(e) Any facility that fails to cease operation after~~
2 ~~agency notification may be fined for each day of noncompliance~~
3 ~~pursuant to s. 400.419.~~

4 ~~(f) When a licensee has an interest in more than one~~
5 ~~assisted living facility, and fails to license any one of~~
6 ~~these facilities, the agency may revoke the license, impose a~~
7 ~~moratorium, or impose a fine pursuant to s. 400.419, on any or~~
8 ~~all of the licensed facilities until such time as the~~
9 ~~unlicensed facility is licensed or ceases operation.~~

10 ~~(g) If the agency determines that an owner is~~
11 ~~operating or maintaining an assisted living facility without~~
12 ~~obtaining a license and determines that a condition exists in~~
13 ~~the facility that poses a threat to the health, safety, or~~
14 ~~welfare of a resident of the facility, the owner is subject to~~
15 ~~the same actions and fines imposed against a licensed facility~~
16 ~~as specified in ss. 400.414 and 400.419.~~

17 ~~(h) Any person aware of the operation of an unlicensed~~
18 ~~assisted living facility must report that facility to the~~
19 ~~agency. The agency shall provide to the department's elder~~
20 ~~information and referral providers a list, by county, of~~
21 ~~licensed assisted living facilities, to assist persons who are~~
22 ~~considering an assisted living facility placement in locating~~
23 ~~a licensed facility.~~

24 (2)(i) Each field office of the Agency for Health Care
25 Administration shall establish a local coordinating workgroup
26 which includes representatives of local law enforcement
27 agencies, state attorneys, local fire authorities, the
28 Department of Children and Family Services, the district
29 long-term care ombudsman council, and the district human
30 rights advocacy committee to assist in identifying the
31 operation of unlicensed facilities and to develop and

1 implement a plan to ensure effective enforcement of state laws
2 relating to such facilities. The workgroup shall report its
3 findings, actions, and recommendations semiannually to the
4 Director of Health Facility Regulation of the agency.

5 (3)~~(2)~~ It is unlawful to knowingly refer a person for
6 residency to an unlicensed assisted living facility; to an
7 assisted living facility the license of which is under denial
8 or has been suspended or revoked; or to an assisted living
9 facility that has a moratorium pursuant to s. 408.814 ~~on~~
10 ~~admissions~~. Any person who violates this subsection commits a
11 noncriminal violation, punishable by a fine not exceeding \$500
12 as provided in s. 775.083.

13 (a) Any health care practitioner, as defined in s.
14 456.001, who is aware of the operation of an unlicensed
15 facility shall report that facility to the agency. Failure to
16 report a facility that the practitioner knows or has
17 reasonable cause to suspect is unlicensed shall be reported to
18 the practitioner's licensing board.

19 (b) Any hospital or community mental health center
20 licensed under chapter 395 or chapter 394 which knowingly
21 discharges a patient or client to an unlicensed facility is
22 subject to sanction by the agency.

23 (c) Any employee of the agency or department, or the
24 Department of Children and Family Services, who knowingly
25 refers a person for residency to an unlicensed facility; to a
26 facility the license of which is under denial or has been
27 suspended or revoked; or to a facility that has a moratorium
28 pursuant to s. 408.814 ~~on admissions~~ is subject to
29 disciplinary action by the agency or department, or the
30 Department of Children and Family Services.

31

1 (d) The employer of any person who is under contract
2 with the agency or department, or the Department of Children
3 and Family Services, and who knowingly refers a person for
4 residency to an unlicensed facility; to a facility the license
5 of which is under denial or has been suspended or revoked; or
6 to a facility that has a moratorium pursuant to s. 408.814 ~~on~~
7 ~~admissions~~ shall be fined and required to prepare a corrective
8 action plan designed to prevent such referrals.

9 (e) The agency shall provide the department and the
10 Department of Children and Family Services with a list of
11 licensed facilities within each county and shall update the
12 list at least quarterly.

13 (f) At least annually, the agency shall notify, in
14 appropriate trade publications, physicians licensed under
15 chapter 458 or chapter 459, hospitals licensed under chapter
16 395, nursing home facilities licensed under part II of this
17 chapter, and employees of the agency or the department, or the
18 Department of Children and Family Services, who are
19 responsible for referring persons for residency, that it is
20 unlawful to knowingly refer a person for residency to an
21 unlicensed assisted living facility and shall notify them of
22 the penalty for violating such prohibition. The department and
23 the Department of Children and Family Services shall, in turn,
24 notify service providers under contract to the respective
25 departments who have responsibility for resident referrals to
26 facilities. Further, the notice must direct each noticed
27 facility and individual to contact the appropriate agency
28 office in order to verify the licensure status of any facility
29 prior to referring any person for residency. Each notice must
30 include the name, telephone number, and mailing address of the
31 appropriate office to contact.

1 Section 73. Section 400.411, Florida Statutes, is
2 amended to read:

3 400.411 Initial application for license; provisional
4 license.--

5 (1) Each applicant for licensure must comply with all
6 provisions of part II of chapter 408 and the following:

7 ~~Application for a license shall be made to the agency on forms~~
8 ~~furnished by it and shall be accompanied by the appropriate~~
9 ~~license fee.~~

10 ~~(2) The applicant may be an individual owner, a~~
11 ~~corporation, a partnership, a firm, an association, or a~~
12 ~~governmental entity.~~

13 ~~(3) The application must be signed by the applicant~~
14 ~~under oath and must contain the following:~~

15 ~~(a) The name, address, date of birth, and social~~
16 ~~security number of the applicant and the name by which the~~
17 ~~facility is to be known. If the applicant is a firm,~~
18 ~~partnership, or association, the application shall contain the~~
19 ~~name, address, date of birth, and social security number of~~
20 ~~every member thereof. If the applicant is a corporation, the~~
21 ~~application shall contain the corporation's name and address;~~
22 ~~the name, address, date of birth, and social security number~~
23 ~~of each of its directors and officers; and the name and~~
24 ~~address of each person having at least a 5-percent ownership~~
25 ~~interest in the corporation.~~

26 ~~(b) The name and address of any professional service,~~
27 ~~firm, association, partnership, or corporation that is to~~
28 ~~provide goods, leases, or services to the facility if a~~
29 ~~5-percent or greater ownership interest in the service, firm,~~
30 ~~association, partnership, or corporation is owned by a person~~

31

1 ~~whose name must be listed on the application under paragraph~~
2 ~~(a).~~

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

17 ~~(d) 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 ~~disclosure of ownership and control interest requirements of~~
21 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
22 ~~this submission.~~

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

27 ~~(a)(f)~~ Identify ~~Identification~~ of all other homes or
28 facilities, including the addresses and the license or
29 licenses under which they operate, if applicable, which are
30 currently operated by the applicant or administrator and which
31 provide housing, meals, and personal services to residents.

1 **(b)(g)** Provide the location of the facility for which
2 a license is sought and documentation, signed by the
3 appropriate local government official, which states that the
4 applicant has met local zoning requirements.

5 **(c)(h)** Provide the name, address, date of birth,
6 social security number, education, and experience of the
7 administrator, if different from the applicant.

8 ~~(4) The applicant shall furnish satisfactory proof of~~
9 ~~financial ability to operate and conduct the facility in~~
10 ~~accordance with the requirements of this part. A certificate~~
11 ~~of authority, pursuant to chapter 651, may be provided as~~
12 ~~proof of financial ability.~~

13 ~~(5) If the applicant is a continuing care facility~~
14 ~~certified under chapter 651, a copy of the facility's~~
15 ~~certificate of authority must be provided.~~

16 ~~(6) The applicant shall provide proof of liability~~
17 ~~insurance as defined in s. 624.605.~~

18 ~~(7) If the applicant is a community residential home,~~
19 ~~the applicant must provide proof that it has met the~~
20 ~~requirements specified in chapter 419.~~

21 ~~(8) The applicant must provide the agency with proof~~
22 ~~of legal right to occupy the property.~~

23 **(2)(9)** ~~The applicant must furnish proof that the~~
24 ~~facility has received a satisfactory firesafety inspection.~~
25 The local authority having jurisdiction or the State Fire
26 Marshal must conduct the inspection within 30 days after
27 written request by the applicant.

28 **(3)(10)** The applicant must furnish documentation of a
29 satisfactory sanitation inspection of the facility by the
30 county health department.

31

1 ~~(11) The applicant must furnish proof of compliance~~
2 ~~with level 2 background screening as required under s.~~
3 ~~400.4174.~~

4 (4)~~(12)~~ A provisional license may be issued to an
5 applicant making initial application for licensure or making
6 application for a change of ownership. A provisional license
7 shall be limited in duration to a specific period of time not
8 to exceed 6 months, as determined by the agency.

9 (5)~~(13)~~ A county or municipality may not issue an
10 occupational license that is being obtained for the purpose of
11 operating a facility regulated under this part without first
12 ascertaining that the applicant has been licensed to operate
13 such facility at the specified location or locations by the
14 agency. The agency shall furnish to local agencies
15 responsible for issuing occupational licenses sufficient
16 instruction for making such determinations.

17 Section 74. Section 400.412, Florida Statutes, is
18 amended to read:

19 400.412 Sale or transfer of ownership of a
20 facility.--It is the intent of the Legislature to protect the
21 rights of the residents of an assisted living facility when
22 the facility is sold or the ownership thereof is transferred.
23 Therefore, in addition to the requirements of part II of
24 chapter 408, whenever a facility is sold or the ownership
25 thereof is transferred, including leasing:

26 ~~(1) The transferee shall make application to the~~
27 ~~agency for a new license at least 60 days before the date of~~
28 ~~transfer of ownership. The application must comply with the~~
29 ~~provisions of s. 400.411.~~

30
31

1 ~~(2)(a) The transferor shall notify the agency in~~
2 ~~writing at least 60 days before the date of transfer of~~
3 ~~ownership.~~

4 (1)(b) The transferee ~~new owner~~ shall notify the
5 residents, in writing, of the change ~~transfer~~ of ownership
6 within 7 days after ~~of his or her~~ receipt of the new license.

7 ~~(3) The transferor shall be responsible and liable~~
8 ~~for:~~

9 ~~(a) The lawful operation of the facility and the~~
10 ~~welfare of the residents domiciled in the facility until the~~
11 ~~date the transferee is licensed by the agency.~~

12 ~~(b) Any and all penalties imposed against the facility~~
13 ~~for violations occurring before the date of transfer of~~
14 ~~ownership unless the penalty imposed is a moratorium on~~
15 ~~admissions or denial of licensure. The moratorium on~~
16 ~~admissions or denial of licensure remains in effect after the~~
17 ~~transfer of ownership, unless the agency has approved the~~
18 ~~transferee's corrective action plan or the conditions which~~
19 ~~created the moratorium or denial have been corrected, and may~~
20 ~~be grounds for denial of license to the transferee in~~
21 ~~accordance with chapter 120.~~

22 ~~(c) Any outstanding liability to the state, unless the~~
23 ~~transferee has agreed, as a condition of sale or transfer, to~~
24 ~~accept the outstanding liabilities and to guarantee payment~~
25 ~~therefor; except that, if the transferee fails to meet these~~
26 ~~obligations, the transferor shall remain liable for the~~
27 ~~outstanding liability.~~

28 (2)(4) The transferor of a facility the license of
29 which is denied pending an administrative hearing shall, as a
30 part of the written change-of-ownership ~~transfer-of-ownership~~
31 contract, advise the transferee that a plan of correction must

1 be submitted by the transferee and approved by the agency at
2 least 7 days before the change transfer of ownership and that
3 failure to correct the condition which resulted in the
4 moratorium pursuant to s. 408.814 ~~on admissions~~ or denial of
5 licensure is grounds for denial of the transferee's license.

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

12 Section 75. Section 400.414, Florida Statutes, is
13 amended to read:

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

17 (1) The agency may deny or ~~revoke, or suspend~~ any
18 license issued under this part, impose a moratorium, or impose
19 an administrative fine in the manner provided in chapter 120,
20 for any of the following actions by an assisted living
21 facility, for the actions of any person subject to level 2
22 background screening under s. 400.4174, or for the actions of
23 any facility employee in violation of any provision of this
24 part, part II of chapter 408, or applicable rule:

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

28 (b) The determination by the agency that the owner
29 lacks the financial ability to provide continuing adequate
30 care to residents.

31

1 (c) Misappropriation or conversion of the property of
2 a resident of the facility.

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

7 (e) A citation of any of the following deficiencies as
8 defined in s. 400.419:

- 9 1. One or more cited class I deficiencies.
10 2. Three or more cited class II deficiencies.
11 3. Five or more cited class III deficiencies that have
12 been cited on a single survey and have not been corrected
13 within the times specified.

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

21 (g) A determination that an employee, volunteer,
22 administrator, or owner, or person who otherwise has access to
23 the residents of a facility does not meet the criteria
24 specified in s. 435.03(2), and the owner or administrator has
25 not taken action to remove the person. Exemptions from
26 disqualification may be granted as set forth in s. 435.07. No
27 administrative action may be taken against the facility if the
28 person is granted an exemption.

29 ~~(h) Violation of a moratorium.~~

30 ~~(i) Failure of the license applicant, the licensee~~
31 ~~during relicensure, or a licensee that holds a provisional~~

1 ~~license to meet the minimum license requirements of this part,~~
2 ~~or related rules, at the time of license application or~~
3 ~~renewal.~~

4 ~~(j) A fraudulent statement or omission of any material~~
5 ~~fact on an application for a license or any other document~~
6 ~~required by the agency, including the submission of a license~~
7 ~~application that conceals the fact that any board member,~~
8 ~~officer, or person owning 5 percent or more of the facility~~
9 ~~may not meet the background screening requirements of s.~~
10 ~~400.4174, or that the applicant has been excluded, permanently~~
11 ~~suspended, or terminated from the Medicaid or Medicare~~
12 ~~programs.~~

13 ~~(h)(k)~~ (h) An intentional or negligent life-threatening
14 act in violation of the uniform firesafety standards for
15 assisted living facilities or other firesafety standards that
16 threatens the health, safety, or welfare of a resident of a
17 facility, as communicated to the agency by the local authority
18 having jurisdiction or the State Fire Marshal.

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

21 ~~(i)(m)~~ (i) Knowingly operating any unlicensed facility or
22 providing without a license any service that must be licensed
23 under this chapter.

24 ~~(j)(n)~~ (j) Any act constituting a ground upon which
25 application for a license may be denied.

26
27 ~~Administrative proceedings challenging agency action under~~
28 ~~this subsection shall be reviewed on the basis of the facts~~
29 ~~and conditions that resulted in the agency action.~~

30 (2) Upon notification by the local authority having
31 jurisdiction or by the State Fire Marshal, the agency may deny

1 or revoke the license of an assisted living facility that
2 fails to correct cited fire code violations that affect or
3 threaten the health, safety, or welfare of a resident of a
4 facility.

5 (3) The agency may deny a license to any applicant
6 controlling interest as defined in s. 408.803 that ~~or to any~~
7 ~~officer or board member of an applicant who is a firm,~~
8 ~~corporation, partnership, or association or who owns 5 percent~~
9 ~~or more of the facility, if the applicant, officer, or board~~
10 ~~member~~ has or had a 25-percent or greater financial or
11 ownership interest in any other facility licensed under this
12 part, or in any entity licensed by this state or another state
13 to provide health or residential care, which facility or
14 entity during the 5 years prior to the application for a
15 license closed due to financial inability to operate; had a
16 receiver appointed or a license denied, suspended, or revoked;
17 was subject to a moratorium pursuant to s. 408.814 on
18 ~~admissions~~; had an injunctive proceeding initiated against it;
19 or has an outstanding fine assessed under this chapter.

20 (4) The agency shall deny or revoke the license of an
21 assisted living facility that has two or more class I
22 violations that are similar or identical to violations
23 identified by the agency during a survey, inspection,
24 monitoring visit, or complaint investigation occurring within
25 the previous 2 years.

26 (5) An action taken by the agency to suspend, deny, or
27 revoke a facility's license under this part, in which the
28 agency claims that the facility owner or an employee of the
29 facility has threatened the health, safety, or welfare of a
30 resident of the facility be heard by the Division of
31 Administrative Hearings of the Department of Management

1 Services within 120 days after receipt of the facility's
2 request for a hearing, unless that time limitation is waived
3 by both parties. The administrative law judge must render a
4 decision within 30 days after receipt of a proposed
5 recommended order.

6 (6) The agency shall provide to the Division of Hotels
7 and Restaurants of the Department of Business and Professional
8 Regulation, on a monthly basis, a list of those assisted
9 living facilities that have had their licenses denied,
10 ~~suspended~~, or revoked or that are involved in an appellate
11 proceeding pursuant to s. 120.60 related to the denial,
12 ~~suspension~~, or revocation of a license.

13 (7) Agency notification of a license ~~suspension or~~
14 revocation, or denial of a license renewal, shall be posted
15 and visible to the public at the facility.

16 ~~(8) The agency may issue a temporary license pending~~
17 ~~final disposition of a proceeding involving the suspension or~~
18 ~~revocation of an assisted living facility license.~~

19 Section 76. Section 400.417, Florida Statutes, is
20 amended to read:

21 400.417 Expiration of license; renewal; conditional
22 license.--

23 (1) ~~Biennial licenses, unless sooner suspended or~~
24 ~~revoked, shall expire 2 years from the date of issuance.~~
25 Limited nursing, extended congregate care, and limited mental
26 health licenses shall expire at the same time as the
27 facility's standard license, regardless of when issued. ~~The~~
28 ~~agency shall notify the facility at least 120 days prior to~~
29 ~~expiration that a renewal license is necessary to continue~~
30 ~~operation. The notification must be provided electronically or~~
31 ~~by mail delivery. Ninety days prior to the expiration date, an~~

1 ~~application for renewal shall be submitted to the agency. Fees~~
2 ~~must be prorated. The failure to file a timely renewal~~
3 ~~application shall result in a late fee charged to the facility~~
4 ~~in an amount equal to 50 percent of the current fee.~~

5 (2) A license shall be renewed in accordance with part
6 II of chapter 408 ~~within 90 days upon the timely filing of an~~
7 ~~application on forms furnished by the agency and the provision~~
8 ~~of satisfactory proof of ability to operate and conduct the~~
9 ~~facility in accordance with the requirements of this part and~~
10 ~~adopted rules, including proof that the facility has received~~
11 ~~a satisfactory firesafety inspection, conducted by the local~~
12 ~~authority having jurisdiction or the State Fire Marshal,~~
13 ~~within the preceding 12 months and an affidavit of compliance~~
14 ~~with the background screening requirements of s. 400.4174.~~

15 (3) In addition to the requirements of part II of
16 chapter 408, ~~An applicant for renewal of a license who has~~
17 ~~complied with the provisions of s. 400.411 with respect to~~
18 ~~proof of financial ability to operate shall not be required to~~
19 ~~provide further proof unless the facility or any other~~
20 ~~facility owned or operated in whole or in part by the same~~
21 ~~person has demonstrated financial instability as provided~~
22 ~~under s. 400.447(2) or unless the agency suspects that the~~
23 ~~facility is not financially stable as a result of the annual~~
24 ~~survey or complaints from the public or a report from the~~
25 ~~State Long-Term Care Ombudsman Council.~~ ~~each facility must~~
26 ~~report to the agency any adverse court action concerning the~~
27 ~~facility's financial viability, within 7 days after its~~
28 ~~occurrence. The agency shall have access to books, records,~~
29 ~~and any other financial documents maintained by the facility~~
30 ~~to the extent necessary to determine the facility's financial~~
31 ~~stability. A license for the operation of a facility shall not~~

1 ~~be renewed if the licensee has any outstanding fines assessed~~
2 ~~pursuant to this part which are in final order status.~~

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

10 (4)~~(5)~~ A conditional license may be issued to an
11 applicant for license renewal if the applicant fails to meet
12 all standards and requirements for licensure. A conditional
13 license issued under this subsection shall be limited in
14 duration to a specific period of time not to exceed 6 months,
15 as determined by the agency, and shall be accompanied by an
16 agency-approved plan of correction.

17 (5)~~(6)~~ When an extended care or limited nursing
18 license is requested during a facility's biennial license
19 period, the fee shall be prorated in order to permit the
20 additional license to expire at the end of the biennial
21 license period. The fee shall be calculated as of the date the
22 additional license application is received by the agency.

23 (6)~~(7)~~ The agency ~~department~~ may by rule establish
24 renewal procedures, identify forms, and specify documentation
25 necessary to administer this section and part II of chapter
26 408.

27 Section 77. Section 400.415, Florida Statutes, is
28 repealed.

29 Section 78. Section 400.4174, Florida Statutes, is
30 amended to read:

31 400.4174 Background screening; exemptions.--

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

5 ~~1. The facility owner if an individual, the~~
6 ~~administrator, and the financial officer.~~

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

27 ~~(b) Proof of compliance with level 2 screening~~
28 ~~standards which has been submitted within the previous 5 years~~
29 ~~to meet any facility or professional licensure requirements of~~
30 ~~the agency or the Department of Health satisfies the~~
31 ~~requirements of this subsection, provided that such proof is~~

1 ~~accompanied, under penalty of perjury, by an affidavit of~~
2 ~~compliance with the provisions of chapter 435. Proof of~~
3 ~~compliance with the background screening requirements of the~~
4 ~~Financial Services Commission and the Office of Insurance~~
5 ~~Regulation for applicants for a certificate of authority to~~
6 ~~operate a continuing care retirement community under chapter~~
7 ~~651, submitted within the last 5 years, satisfies the~~
8 ~~Department of Law Enforcement and Federal Bureau of~~
9 ~~Investigation portions of a level 2 background check.~~

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

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

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

31

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

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

17 Section 79. Section 400.4176, Florida Statutes, is
18 amended to read:

19 400.4176 Notice of change of administrator.--If,
20 during the period for which a license is issued, the owner
21 changes administrators, the owner must notify the agency of
22 the change within 10 days and provide documentation within 90
23 days that the new administrator has completed the applicable
24 core educational requirements under s. 400.452. ~~Background~~
25 ~~screening shall be completed on any new administrator as~~
26 ~~specified in s. 400.4174.~~

27 Section 80. Subsection (7) of section 400.4178,
28 Florida Statutes, is repealed.

29 Section 81. Section 400.418, Florida Statutes, is
30 amended to read:

31

1 400.418 Disposition of fees and administrative
2 fines.--

3 ~~(1) Income from license fees, inspection fees, late~~
4 ~~fees, and administrative fines collected under this part~~
5 ~~generated pursuant to ss. 400.407, 400.408, 400.417, 400.419,~~
6 ~~and 400.431 shall be deposited in the Health Care Trust Fund~~
7 ~~administered by the agency. Such funds shall be directed to~~
8 and used by the agency for the following purposes:

9 (1)(a) Up to 50 percent of the trust funds accrued
10 each fiscal year under this part may be used to offset the
11 expenses of receivership, pursuant to s. 400.422, if the court
12 determines that the income and assets of the facility are
13 insufficient to provide for adequate management and operation.

14 (2)(b) An amount of \$5,000 of the trust funds accrued
15 each year under this part shall be allocated to pay for
16 inspection-related physical and mental health examinations
17 requested by the agency pursuant to s. 400.426 for residents
18 who are either recipients of supplemental security income or
19 have monthly incomes not in excess of the maximum combined
20 federal and state cash subsidies available to supplemental
21 security income recipients, as provided for in s. 409.212.
22 Such funds shall only be used where the resident is ineligible
23 for Medicaid.

24 (3)(c) Any trust funds accrued each year under this
25 part and not used for the purposes specified in paragraphs (a)
26 and (b) shall be used to offset the costs of the licensure
27 program, ~~including the costs of conducting background~~
28 ~~investigations, verifying information submitted, defraying the~~
29 costs of processing the names of applicants, and conducting
30 inspections and monitoring visits pursuant to this part and
31 part II of chapter 408.

1 ~~(2) Income from fees generated pursuant to s.~~
2 ~~400.441(5) shall be deposited in the Health Care Trust Fund~~
3 ~~and used to offset the costs of printing and postage.~~

4 Section 82. Section 400.419, Florida Statutes, is
5 amended to read:

6 400.419 Violations; imposition of administrative
7 fines; grounds.--

8 (1) The agency shall impose an administrative fine in
9 the manner provided in chapter 120 for a violation of any
10 provision of this part, part II of chapter 408, or applicable
11 rule ~~any of the actions or violations as set forth within this~~
12 ~~section~~ by an assisted living facility, for the actions of any
13 person subject to level 2 background screening under s.
14 400.4174, for the actions of any facility employee, or for an
15 intentional or negligent act seriously affecting the health,
16 safety, or welfare of a resident of the facility.

17 (2) Each violation of this part and adopted rules
18 shall be classified according to the nature of the violation
19 and the gravity of its probable effect on facility residents.
20 The agency shall indicate the classification on the written
21 notice of the violation as follows:

22 (a) Class "I" violations are those conditions or
23 occurrences related to the operation and maintenance of a
24 facility or to the personal care of residents which the agency
25 determines present an imminent danger to the residents or
26 guests of the facility or a substantial probability that death
27 or serious physical or emotional harm would result therefrom.
28 The condition or practice constituting a class I violation
29 shall be abated or eliminated within 24 hours, unless a fixed
30 period, as determined by the agency, is required for
31 correction. The agency shall impose an administrative fine for

1 a cited class I violation in an amount not less than \$5,000
2 and not exceeding \$10,000 for each violation. A fine may be
3 levied notwithstanding the correction of the violation.

4 (b) Class "II" violations are those conditions or
5 occurrences related to the operation and maintenance of a
6 facility or to the personal care of residents which the agency
7 determines directly threaten the physical or emotional health,
8 safety, or security of the facility residents, other than
9 class I violations. The agency shall impose an administrative
10 fine for a cited class II violation in an amount not less than
11 \$1,000 and not exceeding \$5,000 for each violation. A fine
12 shall be levied notwithstanding the correction of the
13 violation.

14 (c) Class "III" violations are those conditions or
15 occurrences related to the operation and maintenance of a
16 facility or to the personal care of residents which the agency
17 determines indirectly or potentially threaten the physical or
18 emotional health, safety, or security of facility residents,
19 other than class I or class II violations. The agency shall
20 impose an administrative fine for a cited class III violation
21 in an amount not less than \$500 and not exceeding \$1,000 for
22 each violation. A citation for a class III violation must
23 specify the time within which the violation is required to be
24 corrected. If a class III violation is corrected within the
25 time specified, no fine may be imposed, unless it is a
26 repeated offense.

27 (d) Class "IV" violations are those conditions or
28 occurrences related to the operation and maintenance of a
29 building or to required reports, forms, or documents that do
30 not have the potential of negatively affecting residents.
31 These violations are of a type that the agency determines do

1 not threaten the health, safety, or security of residents of
2 the facility. The agency shall impose an administrative fine
3 for a cited class IV violation in an amount not less than \$100
4 and not exceeding \$200 for each violation. A citation for a
5 class IV violation must specify the time within which the
6 violation is required to be corrected. If a class IV violation
7 is corrected within the time specified, no fine shall be
8 imposed. Any class IV violation that is corrected during the
9 time an agency survey is being conducted will be identified as
10 an agency finding and not as a violation.

11 (3) In determining if a penalty is to be imposed and
12 in fixing the amount of the fine, the agency shall consider
13 the following factors:

14 (a) The gravity of the violation, including the
15 probability that death or serious physical or emotional harm
16 to a resident will result or has resulted, the severity of the
17 action or potential harm, and the extent to which the
18 provisions of the applicable laws or rules were violated.

19 (b) Actions taken by the owner or administrator to
20 correct violations.

21 (c) Any previous violations.

22 (d) The financial benefit to the facility of
23 committing or continuing the violation.

24 (e) The licensed capacity of the facility.

25 (4) Each day of continuing violation after the date
26 fixed for termination of the violation, as ordered by the
27 agency, constitutes an additional, separate, and distinct
28 violation.

29 (5) Any action taken to correct a violation shall be
30 documented in writing by the owner or administrator of the
31 facility and verified through followup visits by agency

1 personnel. The agency may impose a fine and, in the case of an
2 owner-operated facility, revoke or deny a facility's license
3 when a facility administrator fraudulently misrepresents
4 action taken to correct a violation.

5 ~~(6) For fines that are upheld following administrative~~
6 ~~or judicial review, the violator shall pay the fine, plus~~
7 ~~interest at the rate as specified in s. 55.03, for each day~~
8 ~~beyond the date set by the agency for payment of the fine.~~

9 ~~(7) Any unlicensed facility that continues to operate~~
10 ~~after agency notification is subject to a \$1,000 fine per day.~~

11 ~~(8) Any licensed facility whose owner or administrator~~
12 ~~concurrently operates an unlicensed facility shall be subject~~
13 ~~to an administrative fine of \$5,000 per day.~~

14 ~~(9) Any facility whose owner fails to apply for a~~
15 ~~change-of-ownership license in accordance with s. 400.412 and~~
16 ~~operates the facility under the new ownership is subject to a~~
17 ~~fine of \$5,000.~~

18 (6)~~(10)~~ In addition to any administrative fines
19 imposed, the agency may assess a survey fee, equal to the
20 lesser of one half of the facility's biennial license and bed
21 fee or \$500, to cover the cost of conducting initial complaint
22 investigations that result in the finding of a violation that
23 was the subject of the complaint or monitoring visits
24 conducted under s. 400.428(3)(c) to verify the correction of
25 the violations.

26 (7)~~(11)~~ The agency, as an alternative to or in
27 conjunction with an administrative action against a facility
28 for violations of this part and adopted rules, shall make a
29 reasonable attempt to discuss each violation and recommended
30 corrective action with the owner or administrator of the
31 facility, prior to written notification. The agency, instead

1 of fixing a period within which the facility shall enter into
2 compliance with standards, may request a plan of corrective
3 action from the facility which demonstrates a good faith
4 effort to remedy each violation by a specific date, subject to
5 the approval of the agency.

6 ~~(12) Administrative fines paid by any facility under~~
7 ~~this section shall be deposited into the Health Care Trust~~
8 ~~Fund and expended as provided in s. 400.418.~~

9 (8)~~(13)~~ The agency shall develop and disseminate an
10 annual list of all facilities sanctioned or fined \$5,000 or
11 more for violations of state standards, the number and class
12 of violations involved, the penalties imposed, and the current
13 status of cases. The list shall be disseminated, at no charge,
14 to the Department of Elderly Affairs, the Department of
15 Health, the Department of Children and Family Services, the
16 area agencies on aging, the Florida Statewide Advocacy
17 Council, and the state and local ombudsman councils. The
18 Department of Children and Family Services shall disseminate
19 the list to service providers under contract to the department
20 who are responsible for referring persons to a facility for
21 residency. The agency may charge a fee commensurate with the
22 cost of printing and postage to other interested parties
23 requesting a copy of this list.

24 Section 83. Subsections (2) and (3) of section 400.42,
25 Florida Statutes, are amended to read:

26 400.42 Certain solicitation prohibited; third-party
27 supplementation.--

28 (2) Solicitation of contributions of any kind in a
29 threatening, coercive, or unduly forceful manner by or on
30 behalf of an assisted living facility or facilities by any
31 agent, employee, owner, or representative of any assisted

1 living facility or facilities is grounds for denial,
2 ~~suspension~~, or revocation of the license of the assisted
3 living facility or facilities by or on behalf of which such
4 contributions were solicited.

5 (3) The admission or maintenance of assisted living
6 facility residents whose care is supported, in whole or in
7 part, by state funds may not be conditioned upon the receipt
8 of any manner of contribution or donation from any person. The
9 solicitation or receipt of contributions in violation of this
10 subsection is grounds for denial, ~~suspension~~, or revocation of
11 license, as provided in s. 400.414, for any assisted living
12 facility by or on behalf of which such contributions were
13 solicited.

14 Section 84. Section 400.421, Florida Statutes, is
15 repealed.

16 Section 85. Subsection (10) of section 400.423,
17 Florida Statutes, is amended to read:

18 400.423 Internal risk management and quality assurance
19 program; adverse incidents and reporting requirements.--

20 (10) The agency ~~Department of Elderly Affairs~~ may
21 adopt rules necessary to administer this section.

22 Section 86. Subsection (8) of section 400.424, Florida
23 Statutes, is amended to read:

24 400.424 Contracts.--

25 (8) The agency ~~department~~ may by rule clarify terms,
26 establish procedures, clarify refund policies and contract
27 provisions, and specify documentation as necessary to
28 administer this section.

29 Section 87. Subsection (3) of section 400.4255,
30 Florida Statutes, is amended to read:

31 400.4255 Use of personnel; emergency care.--

1 (3) Facility staff may withhold or withdraw
2 cardiopulmonary resuscitation if presented with an order not
3 to resuscitate executed pursuant to s. 401.45. The agency
4 ~~department~~ shall adopt rules providing for the implementation
5 of such orders. Facility staff and facilities shall not be
6 subject to criminal prosecution or civil liability, nor be
7 considered to have engaged in negligent or unprofessional
8 conduct, for withholding or withdrawing cardiopulmonary
9 resuscitation pursuant to such an order and applicable rules
10 ~~adopted by the department~~. The absence of an order to
11 resuscitate executed pursuant to s. 401.45 does not preclude a
12 physician from withholding or withdrawing cardiopulmonary
13 resuscitation as otherwise permitted by law.

14 Section 88. Subsection (6) of section 400.4256,
15 Florida Statutes, is amended to read:

16 400.4256 Assistance with self-administration of
17 medication.--

18 (6) The agency ~~department~~ may by rule establish
19 facility procedures and interpret terms as necessary to
20 implement this section.

21 Section 89. Subsection (8) of section 400.427, Florida
22 Statutes, is amended to read:

23 400.427 Property and personal affairs of residents.--

24 (8) The agency ~~department~~ may by rule clarify terms
25 and specify procedures and documentation necessary to
26 administer the provisions of this section relating to the
27 proper management of residents' funds and personal property
28 and the execution of surety bonds.

29 Section 90. Subsection (4) of section 400.4275,
30 Florida Statutes, is amended to read:

31

1 400.4275 Business practice; personnel records;
2 liability insurance.--The assisted living facility shall be
3 administered on a sound financial basis that is consistent
4 with good business practices.

5 (4) The agency ~~department~~ may by rule clarify terms,
6 establish requirements for financial records, accounting
7 procedures, personnel procedures, insurance coverage, and
8 reporting procedures, and specify documentation as necessary
9 to implement the requirements of this section.

10 Section 91. Subsections (1) and (5) of section
11 400.431, Florida Statutes, are amended to read:

12 400.431 Closing of facility; notice; penalty.--

13 (1) ~~Whenever a facility voluntarily discontinues~~
14 ~~operation, it shall inform the agency in writing at least 90~~
15 ~~days prior to the discontinuance of operation.~~ The facility
16 shall also inform each resident or the next of kin, legal
17 representative, or agency acting on each resident's behalf, of
18 the fact and the proposed time of such discontinuance,
19 following the notification requirements provided in s.
20 400.428(1)(k). In the event a resident has no person to
21 represent him or her, the facility shall be responsible for
22 referral to an appropriate social service agency for
23 placement.

24 (5) The agency may levy a fine in an amount no greater
25 than \$5,000 upon each person or business entity that owns any
26 interest in a facility that terminates operation without
27 providing notice to the agency and the residents of the
28 facility at least 30 days before operation ceases. This fine
29 shall not be levied against any facility involuntarily closed
30 at the initiation of the agency. The agency shall use the
31 proceeds of the fines to operate the facility until all

1 residents of the facility are relocated ~~and shall deposit any~~
2 ~~balance of the proceeds into the Health Care Trust Fund~~
3 ~~established pursuant to s. 400.418.~~

4 Section 92. Section 400.434, Florida Statutes, is
5 amended to read:

6 400.434 Right of entry and inspection.--Any duly
7 designated officer or employee of the department, the
8 Department of Children and Family Services, ~~the agency,~~the
9 state or local fire marshal, ~~or~~ a member of the state or local
10 long-term care ombudsman council, or the agency in accordance
11 with s. 408.811 shall have the right to enter unannounced upon
12 and into the premises of any facility licensed pursuant to
13 this part in order to determine the state of compliance with
14 the provisions of this part, part II of chapter 408,and
15 applicable of rules or standards in force pursuant thereto.
16 ~~The right of entry and inspection shall also extend to any~~
17 ~~premises which the agency has reason to believe is being~~
18 ~~operated or maintained as a facility without a license; but no~~
19 ~~such entry or inspection of any premises may be made without~~
20 ~~the permission of the owner or person in charge thereof,~~
21 ~~unless a warrant is first obtained from the circuit court~~
22 ~~authorizing such entry. The warrant requirement shall extend~~
23 ~~only to a facility which the agency has reason to believe is~~
24 ~~being operated or maintained as a facility without a license.~~
25 ~~Any application for a license or renewal thereof made pursuant~~
26 ~~to this part shall constitute permission for, and complete~~
27 ~~acquiescence in, any entry or inspection of the premises for~~
28 ~~which the license is sought, in order to facilitate~~
29 ~~verification of the information submitted on or in connection~~
30 ~~with the application; to discover, investigate, and determine~~
31 ~~the existence of abuse or neglect; or to elicit, receive,~~

1 ~~respond to, and resolve complaints. Any current valid license~~
2 ~~shall constitute unconditional permission for, and complete~~
3 ~~acquiescence in, any entry or inspection of the premises by~~
4 ~~authorized personnel.~~ The agency shall retain the right of
5 entry and inspection of facilities that have had a license
6 revoked or suspended within the previous 24 months, to ensure
7 that the facility is not operating unlawfully. However, before
8 entering the facility, a statement of probable cause must be
9 filed with the director of the agency, who must approve or
10 disapprove the action within 48 hours. Probable cause shall
11 include, but is not limited to, evidence that the facility
12 holds itself out to the public as a provider of personal care
13 services or the receipt of a complaint by the long-term care
14 ombudsman council about the facility. Data collected by the
15 state or local long-term care ombudsman councils or the state
16 or local advocacy councils may be used by the agency in
17 investigations involving violations of regulatory standards.

18 Section 93. Subsection (1) of section 400.435, Florida
19 Statutes, is repealed.

20 Section 94. Section 400.441, Florida Statutes, is
21 amended to read:

22 400.441 Rules establishing standards.--

23 (1) It is the intent of the Legislature that rules
24 published and enforced pursuant to this section shall include
25 criteria by which a reasonable and consistent quality of
26 resident care and quality of life may be ensured and the
27 results of such resident care may be demonstrated. Such rules
28 shall also ensure a safe and sanitary environment that is
29 residential and noninstitutional in design or nature. It is
30 further intended that reasonable efforts be made to
31 accommodate the needs and preferences of residents to enhance

1 the quality of life in a facility. In order to provide safe
2 and sanitary facilities and the highest quality of resident
3 care accommodating the needs and preferences of residents, the
4 agency ~~department~~, in consultation with the department ~~agency~~,
5 the Department of Children and Family Services, and the
6 Department of Health, shall adopt rules, policies, and
7 procedures to administer this part and part II of chapter 408,
8 which must include reasonable and fair minimum standards in
9 relation to:

10 (a) The requirements for and maintenance of
11 facilities, not in conflict with the provisions of chapter
12 553, relating to plumbing, heating, cooling, lighting,
13 ventilation, living space, and other housing conditions, which
14 will ensure the health, safety, and comfort of residents and
15 protection from fire hazard, including adequate provisions for
16 fire alarm and other fire protection suitable to the size of
17 the structure. Uniform firesafety standards shall be
18 established and enforced by the State Fire Marshal in
19 cooperation with the agency, the department, and the
20 Department of Health.

21 1. Evacuation capability determination.--

22 a. The provisions of the National Fire Protection
23 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
24 for determining the ability of the residents, with or without
25 staff assistance, to relocate from or within a licensed
26 facility to a point of safety as provided in the fire codes
27 adopted herein. An evacuation capability evaluation for
28 initial licensure shall be conducted within 6 months after the
29 date of licensure. For existing licensed facilities that are
30 not equipped with an automatic fire sprinkler system, the
31 administrator shall evaluate the evacuation capability of

1 residents at least annually. The evacuation capability
2 evaluation for each facility not equipped with an automatic
3 fire sprinkler system shall be validated, without liability,
4 by the State Fire Marshal, by the local fire marshal, or by
5 the local authority having jurisdiction over firesafety,
6 before the license renewal date. If the State Fire Marshal,
7 local fire marshal, or local authority having jurisdiction
8 over firesafety has reason to believe that the evacuation
9 capability of a facility as reported by the administrator may
10 have changed, it may, with assistance from the facility
11 administrator, reevaluate the evacuation capability through
12 timed exiting drills. Translation of timed fire exiting drills
13 to evacuation capability may be determined:

14 (I) Three minutes or less: prompt.

15 (II) More than 3 minutes, but not more than 13
16 minutes: slow.

17 (III) More than 13 minutes: impractical.

18 b. The Office of the State Fire Marshal shall provide
19 or cause the provision of training and education on the proper
20 application of Chapter 5, NFPA 101A, 1995 edition, to its
21 employees, to staff of the Agency for Health Care
22 Administration who are responsible for regulating facilities
23 under this part, and to local governmental inspectors. The
24 Office of the State Fire Marshal shall provide or cause the
25 provision of this training within its existing budget, but may
26 charge a fee for this training to offset its costs. The
27 initial training must be delivered within 6 months after July
28 1, 1995, and as needed thereafter.

29 c. The Office of the State Fire Marshal, in
30 cooperation with provider associations, shall provide or cause
31 the provision of a training program designed to inform

1 facility operators on how to properly review bid documents
2 relating to the installation of automatic fire sprinklers.
3 The Office of the State Fire Marshal shall provide or cause
4 the provision of this training within its existing budget, but
5 may 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 d. The administrator of a licensed facility shall sign
9 an affidavit verifying the number of residents occupying the
10 facility at the time of the evacuation capability evaluation.

11 2. Firesafety requirements.--

12 a. Except for the special applications provided
13 herein, effective January 1, 1996, the provisions of the
14 National Fire Protection Association, Life Safety Code, NFPA
15 101, 1994 edition, Chapter 22 for new facilities and Chapter
16 23 for existing facilities shall be the uniform fire code
17 applied by the State Fire Marshal for assisted living
18 facilities, pursuant to s. 633.022.

19 b. Any new facility, regardless of size, that applies
20 for a license on or after January 1, 1996, must be equipped
21 with an automatic fire sprinkler system. The exceptions as
22 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
23 adopted herein, apply to any new facility housing eight or
24 fewer residents. On July 1, 1995, local governmental entities
25 responsible for the issuance of permits for construction shall
26 inform, without liability, any facility whose permit for
27 construction is obtained prior to January 1, 1996, of this
28 automatic fire sprinkler requirement. As used in this part,
29 the term "a new facility" does not mean an existing facility
30 that has undergone change of ownership.

31

1 c. Notwithstanding any provision of s. 633.022 or of
2 the National Fire Protection Association, NFPA 101A, Chapter
3 5, 1995 edition, to the contrary, any existing facility
4 housing eight or fewer residents is not required to install an
5 automatic fire sprinkler system, nor to comply with any other
6 requirement in Chapter 23, NFPA 101, 1994 edition, that
7 exceeds the firesafety requirements of NFPA 101, 1988 edition,
8 that applies to this size facility, unless the facility has
9 been classified as impractical to evacuate. Any existing
10 facility housing eight or fewer residents that is classified
11 as impractical to evacuate must install an automatic fire
12 sprinkler system within the timeframes granted in this
13 section.

14 d. Any existing facility that is required to install
15 an automatic fire sprinkler system under this paragraph need
16 not meet other firesafety requirements of Chapter 23, NFPA
17 101, 1994 edition, which exceed the provisions of NFPA 101,
18 1988 edition. The mandate contained in this paragraph which
19 requires certain facilities to install an automatic fire
20 sprinkler system supersedes any other requirement.

21 e. This paragraph does not supersede the exceptions
22 granted in NFPA 101, 1988 edition or 1994 edition.

23 f. This paragraph does not exempt facilities from
24 other firesafety provisions adopted under s. 633.022 and local
25 building code requirements in effect before July 1, 1995.

26 g. A local government may charge fees only in an
27 amount not to exceed the actual expenses incurred by local
28 government relating to the installation and maintenance of an
29 automatic fire sprinkler system in an existing and properly
30 licensed assisted living facility structure as of January 1,
31 1996.

1 h. If a licensed facility undergoes major
2 reconstruction or addition to an existing building on or after
3 January 1, 1996, the entire building must be equipped with an
4 automatic fire sprinkler system. Major reconstruction of a
5 building means repair or restoration that costs in excess of
6 50 percent of the value of the building as reported on the tax
7 rolls, excluding land, before reconstruction. Multiple
8 reconstruction projects within a 5-year period the total costs
9 of which exceed 50 percent of the initial value of the
10 building at the time the first reconstruction project was
11 permitted are to be considered as major reconstruction.
12 Application for a permit for an automatic fire sprinkler
13 system is required upon application for a permit for a
14 reconstruction project that creates costs that go over the
15 50-percent threshold.

16 i. Any facility licensed before January 1, 1996, that
17 is required to install an automatic fire sprinkler system
18 shall ensure that the installation is completed within the
19 following timeframes based upon evacuation capability of the
20 facility as determined under subparagraph 1.:

21 (I) Impractical evacuation capability, 24 months.

22 (II) Slow evacuation capability, 48 months.

23 (III) Prompt evacuation capability, 60 months.

24

25 The beginning date from which the deadline for the automatic
26 fire sprinkler installation requirement must be calculated is
27 upon receipt of written notice from the local fire official
28 that an automatic fire sprinkler system must be installed. The
29 local fire official shall send a copy of the document
30 indicating the requirement of a fire sprinkler system to the
31 Agency for Health Care Administration.

1 j. It is recognized that the installation of an
2 automatic fire sprinkler system may create financial hardship
3 for some facilities. The appropriate local fire official
4 shall, without liability, grant two 1-year extensions to the
5 timeframes for installation established herein, if an
6 automatic fire sprinkler installation cost estimate and proof
7 of denial from two financial institutions for a construction
8 loan to install the automatic fire sprinkler system are
9 submitted. However, for any facility with a class I or class
10 II, or a history of uncorrected class III, firesafety
11 deficiencies, an extension must not be granted. The local
12 fire official shall send a copy of the document granting the
13 time extension to the Agency for Health Care Administration.

14 k. A facility owner whose facility is required to be
15 equipped with an automatic fire sprinkler system under Chapter
16 23, NFPA 101, 1994 edition, as adopted herein, must disclose
17 to any potential buyer of the facility that an installation of
18 an automatic fire sprinkler requirement exists. The sale of
19 the facility does not alter the timeframe for the installation
20 of the automatic fire sprinkler system.

21 l. Existing facilities required to install an
22 automatic fire sprinkler system as a result of
23 construction-type restrictions in Chapter 23, NFPA 101, 1994
24 edition, as adopted herein, or evacuation capability
25 requirements shall be notified by the local fire official in
26 writing of the automatic fire sprinkler requirement, as well
27 as the appropriate date for final compliance as provided in
28 this subparagraph. The local fire official shall send a copy
29 of the document to the Agency for Health Care Administration.

30 m. Except in cases of life-threatening fire hazards,
31 if an existing facility experiences a change in the evacuation

1 capability, or if the local authority having jurisdiction
2 identifies a construction-type restriction, such that an
3 automatic fire sprinkler system is required, it shall be
4 afforded time for installation as provided in this
5 subparagraph.

6
7 Facilities that are fully sprinkled and in compliance with
8 other firesafety standards are not required to conduct more
9 than one of the required fire drills between the hours of 11
10 p.m. and 7 a.m., per year. In lieu of the remaining drills,
11 staff responsible for residents during such hours may be
12 required to participate in a mock drill that includes a review
13 of evacuation procedures. Such standards must be included or
14 referenced in the rules adopted by the State Fire Marshal.
15 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
16 final administrative authority for firesafety standards
17 established and enforced pursuant to this section. All
18 licensed facilities must have an annual fire inspection
19 conducted by the local fire marshal or authority having
20 jurisdiction.

21 (b) The preparation and annual update of a
22 comprehensive emergency management plan. Such standards must
23 be included in the rules adopted by the agency ~~department~~
24 after consultation with the Department of Community Affairs.
25 At a minimum, the rules must provide for plan components that
26 address emergency evacuation transportation; adequate
27 sheltering arrangements; postdisaster activities, including
28 provision of emergency power, food, and water; postdisaster
29 transportation; supplies; staffing; emergency equipment;
30 individual identification of residents and transfer of
31 records; communication with families; and responses to family

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

13 (c) The number, training, and qualifications of all
14 personnel having responsibility for the care of residents.
15 The rules must require adequate staff to provide for the
16 safety of all residents. Facilities licensed for 17 or more
17 residents are required to maintain an alert staff for 24 hours
18 per day.

19 (d) All sanitary conditions within the facility and
20 its surroundings which will ensure the health and comfort of
21 residents. The rules must clearly delineate the
22 responsibilities of the agency's licensure and survey staff,
23 the county health departments, and the local authority having
24 jurisdiction over fire safety and ensure that inspections are
25 not duplicative. The agency may collect fees for food service
26 inspections conducted by the county health departments and
27 transfer such fees to the Department of Health.

28 (e) ~~License application and license renewal, transfer~~
29 ~~of ownership,~~ Proper management of resident funds and personal
30 property, surety bonds, resident contracts, refund policies,
31 ~~financial ability to operate,~~ and facility and staff records.

1 (f) Inspections, complaint investigations,
2 ~~moratoriums~~, classification of deficiencies, levying and
3 enforcement of penalties, and use of income from fees and
4 fines.

5 (g) The enforcement of the resident bill of rights
6 specified in s. 400.428.

7 (h) The care and maintenance of residents, which must
8 include, but is not limited to:

9 1. The supervision of residents;

10 2. The provision of personal services;

11 3. The provision of, or arrangement for, social and
12 leisure activities;

13 4. The arrangement for appointments and transportation
14 to appropriate medical, dental, nursing, or mental health
15 services, as needed by residents;

16 5. The management of medication;

17 6. The nutritional needs of residents;

18 7. Resident records; and

19 8. Internal risk management and quality assurance.

20 (i) Facilities holding a limited nursing, extended
21 congregate care, or limited mental health license.

22 (j) The establishment of specific criteria to define
23 appropriateness of resident admission and continued residency
24 in a facility holding a standard, limited nursing, extended
25 congregate care, and limited mental health license.

26 (k) The use of physical or chemical restraints. The
27 use of physical restraints is limited to half-bed rails as
28 prescribed and documented by the resident's physician with the
29 consent of the resident or, if applicable, the resident's
30 representative or designee or the resident's surrogate,
31 guardian, or attorney in fact. The use of chemical restraints

1 is limited to prescribed dosages of medications authorized by
2 the resident's physician and must be consistent with the
3 resident's diagnosis. Residents who are receiving medications
4 that can serve as chemical restraints must be evaluated by
5 their physician at least annually to assess:

6 1. The continued need for the medication.

7 2. The level of the medication in the resident's
8 blood.

9 3. The need for adjustments in the prescription.

10 (2) In adopting any rules pursuant to this part, the
11 agency ~~department~~, in conjunction with the department ~~agency~~,
12 shall make distinct standards for facilities based upon
13 facility size; the types of care provided; the physical and
14 mental capabilities and needs of residents; the type,
15 frequency, and amount of services and care offered; and the
16 staffing characteristics of the facility. Rules developed
17 pursuant to this section shall not restrict the use of shared
18 staffing and shared programming in facilities that are part of
19 retirement communities that provide multiple levels of care
20 and otherwise meet the requirements of law and rule. Except
21 for uniform firesafety standards, the agency ~~department~~ shall
22 adopt by rule separate and distinct standards for facilities
23 with 16 or fewer beds and for facilities with 17 or more beds.
24 The standards for facilities with 16 or fewer beds shall be
25 appropriate for a noninstitutional residential environment,
26 provided that the structure is no more than two stories in
27 height and all persons who cannot exit the facility unassisted
28 in an emergency reside on the first floor. The agency
29 ~~department~~, in conjunction with the department ~~agency~~, may
30 make other distinctions among types of facilities as necessary
31 to enforce the provisions of this part. Where appropriate, the

1 agency shall offer alternate solutions for complying with
2 established standards, based on distinctions made by the
3 department and the agency relative to the physical
4 characteristics of facilities and the types of care offered
5 therein.

6 ~~(3) The department shall submit a copy of proposed~~
7 ~~rules to the Speaker of the House of Representatives, the~~
8 ~~President of the Senate, and appropriate committees of~~
9 ~~substance for review and comment prior to the promulgation~~
10 ~~thereof.~~

11 (a) Rules adopted ~~promulgated~~ by the agency department
12 shall encourage the development of homelike facilities which
13 promote the dignity, individuality, personal strengths, and
14 decisionmaking ability of residents.

15 (b) The agency, in consultation with the department,
16 may waive rules promulgated pursuant to this part in order to
17 demonstrate and evaluate innovative or cost-effective
18 congregate care alternatives which enable individuals to age
19 in place. Such waivers may be granted only in instances where
20 there is reasonable assurance that the health, safety, or
21 welfare of residents will not be endangered. To apply for a
22 waiver, the licensee shall submit to the agency a written
23 description of the concept to be demonstrated, including
24 goals, objectives, and anticipated benefits; the number and
25 types of residents who will be affected, if applicable; a
26 brief description of how the demonstration will be evaluated;
27 and any other information deemed appropriate by the agency.
28 Any facility granted a waiver shall submit a report of
29 findings to the agency and the department within 12 months.
30 At such time, the agency may renew or revoke the waiver or
31 pursue any regulatory or statutory changes necessary to allow

1 other facilities to adopt the same practices. The agency
2 ~~department~~ may by rule clarify terms and establish waiver
3 application procedures, criteria for reviewing waiver
4 proposals, and procedures for reporting findings, as necessary
5 to implement this subsection.

6 (4) The agency may use an abbreviated biennial
7 standard licensure inspection that consists of a review of key
8 quality-of-care standards in lieu of a full inspection in
9 facilities which have a good record of past performance.
10 However, a full inspection shall be conducted in facilities
11 which have had a history of class I or class II violations,
12 uncorrected class III violations, confirmed ombudsman council
13 complaints, or confirmed licensure complaints, within the
14 previous licensure period immediately preceding the inspection
15 or when a potentially serious problem is identified during the
16 abbreviated inspection. The agency, in consultation with the
17 department, shall develop the key quality-of-care standards
18 with input from the State Long-Term Care Ombudsman Council and
19 representatives of provider groups for incorporation into its
20 rules. The agency ~~department~~, in consultation with the
21 ~~department~~ agency, shall report annually to the Legislature
22 concerning its implementation of this subsection. The report
23 shall include, at a minimum, the key quality-of-care standards
24 which have been developed; the number of facilities identified
25 as being eligible for the abbreviated inspection; the number
26 of facilities which have received the abbreviated inspection
27 and, of those, the number that were converted to full
28 inspection; the number and type of subsequent complaints
29 received by the agency or department on facilities which have
30 had abbreviated inspections; any recommendations for
31 modification to this subsection; any plans by the agency to

1 modify its implementation of this subsection; and any other
2 information which the agency department believes should be
3 reported.

4 ~~(5) A fee shall be charged by the department to any~~
5 ~~person requesting a copy of this part or rules promulgated~~
6 ~~under this part. Such fees shall not exceed the actual cost~~
7 ~~of duplication and postage.~~

8 Section 95. Subsection (4) of section 400.442, Florida
9 Statutes, is amended to read:

10 400.442 Pharmacy and dietary services.--

11 (4) The agency department may by rule establish
12 procedures and specify documentation as necessary to implement
13 this section.

14 Section 96. Subsection (3) of section 400.444, Florida
15 Statutes, is amended to read:

16 400.444 Construction and renovation; requirements.--

17 (3) The agency department may adopt rules to establish
18 procedures and specify the documentation necessary to
19 implement this section.

20 Section 97. Subsections (1), (2), and (3) of section
21 400.447 and section 400.451, Florida Statutes, are repealed.

22 Section 98. Subsections (1), (3), and (6) of section
23 400.452, Florida Statutes, as amended by section 3 of chapter
24 2003-405, Laws of Florida, are amended to read:

25 400.452 Staff training and educational programs; core
26 educational requirement.--

27 (1) Administrators and other assisted living facility
28 staff must meet minimum training and education requirements
29 established by the Department of Elderly Affairs or the agency
30 by rule. This training and education is intended to assist
31 facilities to appropriately respond to the needs of residents,

1 to maintain resident care and facility standards, and to meet
2 licensure requirements.

3 (3) Effective January 1, 2004, a new facility
4 administrator must complete the required training and
5 education, including the competency test, within a reasonable
6 time after being employed as an administrator, as determined
7 by the department. Failure to do so is a violation of this
8 part and subjects the violator to an administrative fine as
9 prescribed in s. 400.419. Administrators licensed in
10 accordance with chapter 468, part II, are exempt from this
11 requirement. Other licensed professionals may be exempted, as
12 determined ~~by the department~~ by rule.

13 (6) Other facility staff shall participate in training
14 relevant to their job duties as specified by rule ~~of the~~
15 ~~department~~.

16 Section 99. Section 400.454, Florida Statutes, is
17 amended to read:

18 400.454 Collection of information; local subsidy.--

19 (1) To enable the agency ~~department~~ to collect the
20 information requested by the Legislature regarding the actual
21 cost of providing room, board, and personal care in
22 facilities, the agency may ~~department is authorized to~~ conduct
23 field visits and audits of facilities as may be necessary.
24 The owners of randomly sampled facilities shall submit such
25 reports, audits, and accountings of cost as required ~~the~~
26 ~~department may require~~ by rule; provided that such reports,
27 audits, and accountings shall be the minimum necessary to
28 implement the provisions of this section. Any facility
29 selected to participate in the study shall cooperate with the
30 agency ~~department~~ by providing cost of operation information
31 to interviewers.

1 (2) Local governments or organizations may contribute
2 to the cost of care of local facility residents by further
3 subsidizing the rate of state-authorized payment to such
4 facilities. Implementation of local subsidy shall require
5 agency ~~departmental~~ approval and shall not result in
6 reductions in the state supplement.

7 Section 100. Subsections (1) and (4) of section
8 400.464, Florida Statutes, are amended to read:

9 400.464 Home health agencies to be licensed;
10 expiration of license; exemptions; unlawful acts; penalties.--

11 (1) The requirements of part II of chapter 408 apply
12 to the provision of services that necessitate licensure
13 pursuant to this part and part II of chapter 408 and to
14 entities licensed or registered by or applying for such
15 licensure or registration from the Agency for Health Care
16 Administration pursuant to this part. However, an applicant
17 for licensure is exempt from the provisions of s. 408.810(10).
18 ~~Any home health agency must be licensed by the agency to~~
19 ~~operate in this state. A license issued to a home health~~
20 ~~agency, unless sooner suspended or revoked, expires 1 year~~
21 ~~after its date of issuance.~~

22 (4)(a) ~~An organization may not provide, offer, or~~
23 ~~advertise home health services to the public unless the~~
24 ~~organization has a valid license or is specifically exempted~~
25 ~~under this part.~~An organization that offers or advertises to
26 the public any service for which licensure or registration is
27 required under this part must include in the advertisement the
28 license number or regulation number issued to the organization
29 by the agency. The agency shall assess a fine of not less
30 than \$100 to any licensee or registrant who fails to include
31 the license or registration number when submitting the

1 advertisement for publication, broadcast, or printing. The
2 holder of a license issued under this part may not advertise
3 or indicate to the public that it holds a home health agency
4 or nurse registry license other than the one it has been
5 issued.

6 (b) A person who violates paragraph (a) is subject to
7 an injunctive proceeding under s. 408.816 ~~s. 400.515~~. A
8 violation of paragraph (a) or s. 408.812 is a deceptive and
9 unfair trade practice and constitutes a violation of the
10 Florida Deceptive and Unfair Trade Practices Act.

11 ~~(c) A person who violates the provisions of paragraph~~
12 ~~(a) commits a misdemeanor of the second degree, punishable as~~
13 ~~provided in s. 775.082 or s. 775.083. Any person who commits~~
14 ~~a second or subsequent violation commits a misdemeanor of the~~
15 ~~first degree, punishable as provided in s. 775.082 or s.~~
16 ~~775.083. Each day of continuing violation constitutes a~~
17 ~~separate offense.~~

18 Section 101. Section 400.471, Florida Statutes, is
19 amended to read:

20 400.471 Application for license; fee; provisional
21 license; temporary permit.--

22 (1) Each applicant for licensure must comply with all
23 provisions of part II of chapter 408.~~Application for an~~
24 ~~initial license or for renewal of an existing license must be~~
25 ~~made under oath to the agency on forms furnished by it and~~
26 ~~must be accompanied by the appropriate license fee as provided~~
27 ~~in subsection (8). The agency must take final action on an~~
28 ~~initial licensure application within 60 days after receipt of~~
29 ~~all required documentation.~~

30 (2) In addition to the requirements of part II of
31 chapter 408, the applicant must file with the application

1 satisfactory proof that the home health agency is in
2 compliance with this part and applicable rules, including:
3 (a) A listing of services to be provided, either
4 directly by the applicant or through contractual arrangements
5 with existing providers; and
6 (b) The number and discipline of professional staff to
7 be employed. ~~an annually thereafter~~
8 ~~(c) Proof of financial ability to operate.~~
9 ~~(3) An applicant for initial licensure must~~
10 ~~demonstrate financial ability to operate by submitting a~~
11 ~~balance sheet and income and expense statement for the first 2~~
12 ~~years of operation which provide evidence of having sufficient~~
13 ~~assets, credit, and projected revenues to cover liabilities~~
14 ~~and expenses. The applicant shall have demonstrated financial~~
15 ~~ability to operate if the applicant's assets, credit, and~~
16 ~~projected revenues meet or exceed projected liabilities and~~
17 ~~expenses. All documents required under this subsection must~~
18 ~~be prepared in accordance with generally accepted accounting~~
19 ~~principles, and the financial statement must be signed by a~~
20 ~~certified public accountant.~~
21 ~~(4) Each applicant for licensure must comply with the~~
22 ~~following requirements:~~
23 ~~(a) Upon receipt of a completed, signed, and dated~~
24 ~~application, the agency shall require background screening of~~
25 ~~the applicant, in accordance with the level 2 standards for~~
26 ~~screening set forth in chapter 435. As used in this~~
27 ~~subsection, the term "applicant" means the administrator, or a~~
28 ~~similarly titled person who is responsible for the day-to-day~~
29 ~~operation of the licensed home health agency, and the~~
30 ~~financial officer, or similarly titled individual who is~~
31

1 ~~responsible for the financial operation of the licensed home~~
2 ~~health agency.~~

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

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

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

1 ~~all standards have been met, or upon the granting of a~~
2 ~~disqualification exemption by the agency as set forth in~~
3 ~~chapter 435. Any other person who is required to undergo level~~
4 ~~2 background screening may serve in his or her capacity~~
5 ~~pending the agency's receipt of the report from the Federal~~
6 ~~Bureau of Investigation. However, the person may not continue~~
7 ~~to serve if the report indicates any violation of background~~
8 ~~screening standards and a disqualification exemption has not~~
9 ~~been requested of and granted by the agency as set forth in~~
10 ~~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 licensee or~~
14 ~~potential licensee from the Medicare or Medicaid programs.~~
15 ~~Proof of compliance with the requirements for disclosure of~~
16 ~~ownership and control interest under the Medicaid or Medicare~~
17 ~~programs may be 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, administrator, or financial officer has been~~
7 ~~found guilty of, regardless of adjudication, or has entered a~~
8 ~~plea of nolo contendere or guilty to, any offense prohibited~~
9 ~~under the level 2 standards for screening set forth in chapter~~
10 ~~435, unless an exemption from disqualification has been~~
11 ~~granted by 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 been or is currently excluded, suspended,~~
19 ~~terminated from, or has involuntarily withdrawn from~~
20 ~~participation in this state's Medicaid program, or the~~
21 ~~Medicaid program of any other state, or from participation in~~
22 ~~the Medicare program or any other governmental or private~~
23 ~~health care or health insurance program.~~

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

26 (3)(5) In addition to the requirements of s. 408.810,
27 the home health agency must also obtain and maintain the
28 following insurance coverages in an amount of not less than
29 \$250,000 per claim, and the home health agency must submit
30 proof of coverage with an initial application for licensure
31 and with each annual application for license renewal:

1 (a) Malpractice insurance as defined in s.
2 624.605(1)(k); and

3 (b) Liability insurance as defined in s.
4 624.605(1)(b).

5 ~~(6) Ninety days before the expiration date, an~~
6 ~~application for renewal must be submitted to the agency under~~
7 ~~oath on forms furnished by it, and a license must be renewed~~
8 ~~if the applicant has met the requirements established under~~
9 ~~this part and applicable rules. The home health agency must~~
10 ~~file with the application satisfactory proof that it is in~~
11 ~~compliance with this part and applicable rules. If there is~~
12 ~~evidence of financial instability, the home health agency must~~
13 ~~submit satisfactory proof of its financial ability to comply~~
14 ~~with the requirements of this part.~~

15 ~~(7) When transferring the ownership of a home health~~
16 ~~agency, the transferee must submit an application for a~~
17 ~~license at least 60 days before the effective date of the~~
18 ~~transfer. If the home health agency is being leased, a copy~~
19 ~~of the lease agreement must be filed with the application.~~

20 (4)(8) 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 fee
23 shall be established by rule and shall be set at ~~The license~~
24 ~~fee and annual renewal fee required of a home health agency~~
25 ~~are nonrefundable. The agency shall set the fees in an amount~~
26 ~~that is sufficient to cover the agency's its costs in carrying~~
27 ~~out its responsibilities under this part, but may not to~~
28 ~~exceed \$2,000 per biennium \$1,000. However, state, county, or~~
29 ~~municipal governments applying for licenses under this part~~
30 ~~are exempt from the payment of license fees. All fees~~

31

1 ~~collected under this part must be deposited in the Health Care~~
2 ~~Trust Fund for the administration of this part.~~

3 ~~(9) The license must be displayed in a conspicuous~~
4 ~~place in the administrative office of the home health agency~~
5 ~~and is valid only while in the possession of the person to~~
6 ~~which it is issued. The license may not be sold, assigned, or~~
7 ~~otherwise transferred, voluntarily or involuntarily, and is~~
8 ~~valid only for the home health agency and location for which~~
9 ~~originally issued.~~

10 ~~(10) A home health agency against whom a revocation or~~
11 ~~suspension proceeding is pending at the time of license~~
12 ~~renewal may be issued a provisional license effective until~~
13 ~~final disposition by the agency of such proceedings. If~~
14 ~~judicial relief is sought from the final disposition, the~~
15 ~~court that has jurisdiction may issue a temporary permit for~~
16 ~~the duration of the judicial proceeding.~~

17 ~~(5)(11)~~ (5) The agency may not issue a license designated
18 as certified to a home health agency that fails to satisfy the
19 requirements of a Medicare certification survey from the
20 agency.

21 ~~(12) The agency may not issue a license to a home~~
22 ~~health agency that has any unpaid fines assessed under this~~
23 ~~part.~~

24 Section 102. Section 400.474, Florida Statutes, is
25 amended to read:

26 400.474 Denial or, ~~suspension~~, revocation of license;
27 injunction; grounds; penalties.--

28 (1) The agency may deny or, ~~revoke~~, ~~or suspend~~ a
29 license, ~~or~~ impose an administrative fine in the manner
30 provided in chapter 120, or initiate injunctive proceedings
31

1 under s. 408.816 for the violation of any provision of this
2 part, part II of chapter 408, or applicable rules ~~s. 400.515~~.

3 (2) Any of the following actions by a home health
4 agency or its employee is grounds for disciplinary action by
5 the agency:

6 (a) Violation of this part, part II of chapter 408, or
7 of applicable rules.

8 (b) An intentional, reckless, or negligent act that
9 materially affects the health or safety of a patient.

10 (c) Knowingly providing home health services in an
11 unlicensed assisted living facility or unlicensed adult
12 family-care home, unless the home health agency or employee
13 reports the unlicensed facility or home to the agency within
14 72 hours after providing the services.

15 ~~(3) The agency may impose the following penalties for~~
16 ~~operating without a license upon an applicant or owner who has~~
17 ~~in the past operated, or who currently operates, a licensed~~
18 ~~home health agency.~~

19 ~~(a) If a home health agency that is found to be~~
20 ~~operating without a license wishes to apply for a license, the~~
21 ~~home health agency may submit an application only after the~~
22 ~~agency has verified that the home health agency no longer~~
23 ~~operates an unlicensed home health agency.~~

24 ~~(b) Any person, partnership, or corporation that~~
25 ~~violates paragraph (a) and that previously operated a licensed~~
26 ~~home health agency or concurrently operates both a licensed~~
27 ~~home health agency and an unlicensed home health agency~~
28 ~~commits a felony of the third degree punishable as provided in~~
29 ~~s. 775.082, s. 775.083, or s. 775.084. If an owner has an~~
30 ~~interest in more than one home health agency and fails to~~
31 ~~license any one of those home health agencies, the agency must~~

1 ~~issue a cease and desist order for the activities of the~~
2 ~~unlicensed home health agency and impose a moratorium on any~~
3 ~~or all of the licensed related home health agencies until the~~
4 ~~unlicensed home health agency is licensed.~~

5 (3)(c) If any home health agency is found to be
6 operating without a license ~~meets the criteria in paragraph~~
7 ~~(a) or paragraph (b)~~ and that home health agency has received
8 any government reimbursement for services ~~provided by an~~
9 ~~unlicensed home health agency~~, the agency shall make a fraud
10 referral to the appropriate government reimbursement program.

11 ~~(4) The agency may deny, revoke, or suspend the~~
12 ~~license of a home health agency, or may impose on a home~~
13 ~~health agency administrative fines not to exceed the aggregate~~
14 ~~sum of \$5,000 if:~~

15 ~~(a) The agency is unable to obtain entry to the home~~
16 ~~health agency to conduct a licensure survey, complaint~~
17 ~~investigation, surveillance visit, or monitoring visit.~~

18 ~~(b) An applicant or a licensed home health agency has~~
19 ~~falsely represented a material fact in the application, or has~~
20 ~~omitted from the application any material fact, including, but~~
21 ~~not limited to, the fact that the controlling or ownership~~
22 ~~interest is held by any officer, director, agent, manager,~~
23 ~~employee, affiliated person, partner, or shareholder who is~~
24 ~~not eligible to participate.~~

25 ~~(c) An applicant, owner, or person who has a 5 percent~~
26 ~~or greater interest in a licensed entity:~~

27 ~~1. Has been previously found by any licensing,~~
28 ~~certifying, or professional standards board or agency to have~~
29 ~~violated the standards or conditions that relate to home~~
30 ~~health-related licensure or certification, or to the quality~~
31 ~~of home health-related services provided; or~~

1 ~~2. Has been or is currently excluded, suspended,~~
2 ~~terminated from, or has involuntarily withdrawn from,~~
3 ~~participation in the Medicaid program of this state or any~~
4 ~~other state, the Medicare program, or any other governmental~~
5 ~~health care or health insurance program.~~

6 Section 103. Subsection (1) and paragraphs (a) and (b)
7 of subsection (2) of section 400.484, Florida Statutes, are
8 amended to read:

9 400.484 Right of inspection; deficiencies; fines.--

10 (1) In accordance with s. 408.811, ~~Any duly authorized~~
11 ~~officer or employee of the agency may make such inspections~~
12 ~~and investigations as are necessary in order to determine the~~
13 ~~state of compliance with this part and with applicable rules.~~
14 ~~The right of inspection extends to any business that the~~
15 ~~agency has reason to believe is being operated as a home~~
16 ~~health agency without a license, but such inspection of any~~
17 ~~such business may not be made without the permission of the~~
18 ~~owner or person in charge unless a warrant is first obtained~~
19 ~~from a circuit court. Any application for a license issued~~
20 ~~under this part or for license renewal constitutes permission~~
21 ~~for an appropriate inspection to verify the information~~
22 ~~submitted on or in connection with the application.~~

23 (2) The agency shall impose fines for various classes
24 of deficiencies in accordance with the following schedule:

25 (a) A class I deficiency is any act, omission, or
26 practice that results in a patient's death, disablement, or
27 permanent injury, or places a patient at imminent risk of
28 death, disablement, or permanent injury. Upon finding a class
29 I deficiency, the agency may impose an administrative fine in
30 the amount of \$5,000 for each occurrence and each day that the
31 deficiency exists. In addition, the agency may immediately

1 revoke the license, or impose a moratorium pursuant to s.
2 408.814 ~~on the admission of new patients~~, until the factors
3 causing the deficiency have been corrected.

4 (b) A class II deficiency is any act, omission, or
5 practice that has a direct adverse effect on the health,
6 safety, or security of a patient. Upon finding a class II
7 deficiency, the agency may impose an administrative fine in
8 the amount of \$1,000 for each occurrence and each day that the
9 deficiency exists. In addition, the agency may suspend the
10 license, or impose a moratorium pursuant to s. 408.814 ~~on the~~
11 ~~admission of new patients~~, until the deficiency has been
12 corrected.

13 Section 104. Section 400.494, Florida Statutes, is
14 amended to read:

15 400.494 Information about patients confidential.--

16 (1) Information about patients received by persons
17 employed by, or providing services to, a home health agency or
18 received by the licensing agency through reports or inspection
19 shall be confidential and exempt from the provisions of s.
20 119.07(1) and may ~~shall~~ not be disclosed to any person other
21 than the patient without the written consent of that patient
22 or the patient's guardian.

23 (2) This section does not apply to information
24 lawfully requested by the Medicaid Fraud Control Unit of the
25 Office of the Attorney General or requested under s. 408.811
26 ~~Department of Legal Affairs.~~

27 Section 105. Section 400.495, Florida Statutes, is
28 amended to read:

29 400.495 Notice of toll-free telephone number for
30 central abuse hotline.--In addition to the requirements of s.
31 408.810(5), ~~On or before the first day home health services~~

1 ~~are provided to a patient, any home health agency or nurse~~
2 ~~registry licensed under this part must inform the patient and~~
3 ~~his or her immediate family, if appropriate, of the right to~~
4 ~~report abusive, neglectful, or exploitative practices. The~~
5 ~~statewide toll-free telephone number for the central abuse~~
6 ~~hotline must be provided to patients in a manner that is~~
7 ~~clearly legible and must include the words: "To report abuse,~~
8 ~~neglect, or exploitation, please call toll-free ... (phone~~
9 ~~number)...."the Agency for Health Care Administration shall~~
10 ~~adopt rules that provide for 90 days' advance notice of a~~
11 ~~change in the toll-free telephone number and that outline due~~
12 ~~process procedures, as provided under chapter 120, for home~~
13 ~~health agency personnel and nurse registry personnel who are~~
14 ~~reported to the central abuse hotline. Home health agencies~~
15 ~~and nurse registries shall establish appropriate policies and~~
16 ~~procedures for providing such notice to patients.~~

17 Section 106. Section 400.497, Florida Statutes, is
18 amended to read:

19 400.497 Rules establishing minimum standards.--The
20 agency shall adopt, publish, and enforce rules to implement
21 part II of chapter 408, this part, including, as applicable,
22 ss. 400.506 and 400.509, which must provide reasonable and
23 fair minimum standards relating to:

24 (1) The home health aide competency test and home
25 health aide training. The agency shall create the home health
26 aide competency test and establish the curriculum and
27 instructor qualifications for home health aide training.
28 Licensed home health agencies may provide this training and
29 shall furnish documentation of such training to other licensed
30 home health agencies upon request. Successful passage of the
31 competency test by home health aides may be substituted for

1 the training required under this section and any rule adopted
2 pursuant thereto.

3 (2) Shared staffing. The agency shall allow shared
4 staffing if the home health agency is part of a retirement
5 community that provides multiple levels of care, is located on
6 one campus, is licensed under this chapter, and otherwise
7 meets the requirements of law and rule.

8 (3) The criteria for the frequency of onsite licensure
9 surveys.

10 (4) Licensure application and renewal.

11 (5) The requirements for onsite and electronic
12 accessibility of supervisory personnel of home health
13 agencies.

14 (6) Information to be included in patients' records.

15 (7) Geographic service areas.

16 (8) Preparation of a comprehensive emergency
17 management plan pursuant to s. 400.492.

18 (a) The Agency for Health Care Administration shall
19 adopt rules establishing minimum criteria for the plan and
20 plan updates, with the concurrence of the Department of Health
21 and in consultation with the Department of Community Affairs.

22 (b) The rules must address the requirements in s.
23 400.492. In addition, the rules shall provide for the
24 maintenance of patient-specific medication lists that can
25 accompany patients who are transported from their homes.

26 (c) The plan is subject to review and approval by the
27 county health department. During its review, the county health
28 department shall ensure that the following agencies, at a
29 minimum, are given the opportunity to review the plan:

30 1. The local emergency management agency.

31 2. The Agency for Health Care Administration.

1 3. The local chapter of the American Red Cross or
2 other lead sheltering agency.

3 4. The district office of the Department of Children
4 and Family Services.

5
6 The county health department shall complete its review within
7 60 days after receipt of the plan and shall either approve the
8 plan or advise the home health agency of necessary revisions.

9 (d) For any home health agency that operates in more
10 than one county, the Department of Health shall review the
11 plan, after consulting with all of the county health
12 departments, the agency, and all the local chapters of the
13 American Red Cross or other lead sheltering agencies in the
14 areas of operation for that particular home health agency. The
15 Department of Health shall complete its review within 90 days
16 after receipt of the plan and shall either approve the plan or
17 advise the home health agency of necessary revisions. The
18 Department of Health shall make every effort to avoid imposing
19 differing requirements based on differences between counties
20 on the home health agency.

21 (e) The requirements in this subsection do not apply
22 to:

23 1. A facility that is certified under chapter 651 and
24 has a licensed home health agency used exclusively by
25 residents of the facility; or

26 2. A retirement community that consists of residential
27 units for independent living and either a licensed nursing
28 home or an assisted living facility, and has a licensed home
29 health agency used exclusively by the residents of the
30 retirement community, provided the comprehensive emergency
31 management plan for the facility or retirement community

1 provides for continuous care of all residents with special
2 needs during an emergency.

3 Section 107. Section 400.506, Florida Statutes, is
4 amended to read:

5 400.506 Licensure of nurse registries; requirements;
6 penalties.--

7 (1) A nurse registry is exempt from the licensing
8 requirements of a home health agency but must be licensed as a
9 nurse registry. The requirements of part II of chapter 408
10 apply to the provision of services that necessitate licensure
11 pursuant to 400.506-400.518 and part II of chapter 408 and to
12 entities licensed by or applying for such licensed from the
13 Agency for Health Care Administration pursuant to ss.
14 400.506-400.518.Each operational site of the nurse registry
15 must be licensed, unless there is more than one site within a
16 county. If there is more than one site within a county, only
17 one license per county is required. Each operational site
18 must be listed on the license.

19 (2) Each applicant for licensure must comply with all
20 provisions of part II of chapter 408, with the exception of s.
21 408.810(6) and (10).~~the 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, or other similarly~~
26 ~~titled individual who is responsible for the daily operation~~
27 ~~of the nurse registry, and of the financial officer, or other~~
28 ~~similarly titled individual who is responsible for the~~
29 ~~financial operation of the registry, including billings for~~
30 ~~patient care and services. The applicant shall comply with~~

31

1 ~~the procedures for level 2 background screening as set forth~~
2 ~~in chapter 435.~~

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

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

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

1 ~~been requested of and granted by the agency as set forth in~~
2 ~~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 may 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 the license if any~~
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 ~~(3) In accordance with s. 408.805, an applicant or~~
16 ~~licensee shall pay a fee for each license application~~
17 ~~submitted under ss. 400.508-400.518 and part II of chapter~~
18 ~~408. The amount of the fee shall be established by rule and~~
19 ~~may not exceed \$2,000 per biennium.~~ ~~Application for license~~
20 ~~must be made to the Agency for Health Care Administration on~~
21 ~~forms furnished by it and must be accompanied by the~~
22 ~~appropriate licensure fee, as established by rule and not to~~
23 ~~exceed the cost of regulation under this part. The licensure~~
24 ~~fee for nurse registries may not exceed \$1,000 and must be~~
25 ~~deposited in the Health Care Trust Fund.~~

26 ~~(4) The Agency for Health Care Administration may~~
27 ~~deny, revoke, or suspend a license or impose an administrative~~
28 ~~fine in the manner provided in chapter 120 against a nurse~~
29 ~~registry that:~~

30 ~~(a) Fails to comply with this section or applicable~~
31 ~~rules.~~

1 ~~(b) Commits an intentional, reckless, or negligent act~~
2 ~~that materially affects the health or safety of a person~~
3 ~~receiving services.~~

4 ~~(5) A license issued for the operation of a nurse~~
5 ~~registry, unless sooner suspended or revoked, expires 1 year~~
6 ~~after its date of issuance. Sixty days before the expiration~~
7 ~~date, an application for renewal must be submitted to the~~
8 ~~Agency for Health Care Administration on forms furnished by~~
9 ~~it. The Agency for Health Care Administration shall renew the~~
10 ~~license if the applicant has met the requirements of this~~
11 ~~section and applicable rules. A nurse registry against which~~
12 ~~a revocation or suspension proceeding is pending at the time~~
13 ~~of license renewal may be issued a conditional license~~
14 ~~effective until final disposition by the Agency for Health~~
15 ~~Care Administration of such proceedings. If judicial relief is~~
16 ~~sought from the final disposition, the court having~~
17 ~~jurisdiction may issue a conditional license for the duration~~
18 ~~of the judicial proceeding.~~

19 ~~(6) The Agency for Health Care Administration may~~
20 ~~institute injunctive proceedings under s. 400.515.~~

21 (4)(7) A person that offers or advertises to the
22 public that it provides any service for which licensure is
23 required under this section must include in such advertisement
24 the license number issued to it by the Agency for Health Care
25 Administration.

26 ~~(8) It is unlawful for a person to offer or advertise~~
27 ~~to the public services as defined by rule without obtaining a~~
28 ~~valid license from the Agency for Health Care Administration.~~
29 ~~It is unlawful for any holder of a license to advertise or~~
30 ~~hold out to the public that he or she holds a license for~~
31 ~~other than that for which he or she actually holds a license.~~

1 ~~A person who violates this subsection is subject to injunctive~~
2 ~~proceedings under s. 400.515.~~

3 ~~(9) Any duly authorized officer or employee of the~~
4 ~~Agency for Health Care Administration may make such~~
5 ~~inspections and investigations as are necessary to respond to~~
6 ~~complaints or to determine the state of compliance with this~~
7 ~~section and applicable rules.~~

8 ~~(a) If, in responding to a complaint, an agent or~~
9 ~~employee of the Agency for Health Care Administration has~~
10 ~~reason to believe that a crime has been committed, he or she~~
11 ~~shall notify the appropriate law enforcement agency.~~

12 ~~(b) If, in responding to a complaint, an agent or~~
13 ~~employee of the Agency for Health Care Administration has~~
14 ~~reason to believe that abuse, neglect, or exploitation has~~
15 ~~occurred, according to the definitions in chapter 415, he or~~
16 ~~she shall file a report under chapter 415.~~

17 (5)~~(10)~~(a) A nurse registry may refer for contract in
18 private residences registered nurses and licensed practical
19 nurses registered and licensed under part I of chapter 464,
20 certified nursing assistants certified under part II of
21 chapter 464, home health aides who present documented proof of
22 successful completion of the training required by rule of the
23 agency, and companions or homemakers for the purposes of
24 providing those services authorized under s. 400.509(1). Each
25 person referred by a nurse registry must provide current
26 documentation that he or she is free from communicable
27 diseases.

28 (b) A certified nursing assistant or home health aide
29 may be referred for a contract to provide care to a patient in
30 his or her home only if that patient is under a physician's
31 care. A certified nursing assistant or home health aide

1 referred for contract in a private residence shall be limited
2 to assisting a patient with bathing, dressing, toileting,
3 grooming, eating, physical transfer, and those normal daily
4 routines the patient could perform for himself or herself were
5 he or she physically capable. A certified nursing assistant
6 or home health aide may not provide medical or other health
7 care services that require specialized training and that may
8 be performed only by licensed health care professionals. The
9 nurse registry shall obtain the name and address of the
10 attending physician and send written notification to the
11 physician within 48 hours after a contract is concluded that a
12 certified nursing assistant or home health aide will be
13 providing care for that patient.

14 (c) A registered nurse shall make monthly visits to
15 the patient's home to assess the patient's condition and
16 quality of care being provided by the certified nursing
17 assistant or home health aide. Any condition which in the
18 professional judgment of the nurse requires further medical
19 attention shall be reported to the attending physician and the
20 nurse registry. The assessment shall become a part of the
21 patient's file with the nurse registry and may be reviewed by
22 the agency during their survey procedure.

23 (6)~~(11)~~ A person who is referred by a nurse registry
24 for contract in private residences and who is not a nurse
25 licensed under part I of chapter 464 may perform only those
26 services or care to clients that the person has been certified
27 to perform or trained to perform as required by law or rules
28 of the Agency for Health Care Administration or the Department
29 of Business and Professional Regulation. Providing services
30 beyond the scope authorized under this subsection constitutes
31 the unauthorized practice of medicine or a violation of the

1 Nurse Practice Act and is punishable as provided under chapter
2 458, chapter 459, or part I of chapter 464.

3 (7)~~(12)~~ Each nurse registry must require every
4 applicant for contract to complete an application form
5 providing the following information:

6 (a) The name, address, date of birth, and social
7 security number of the applicant.

8 (b) The educational background and employment history
9 of the applicant.

10 (c) The number and date of the applicable license or
11 certification.

12 (d) When appropriate, information concerning the
13 renewal of the applicable license, registration, or
14 certification.

15 (8)~~(13)~~ Each nurse registry must comply with the
16 procedures set forth in s. 400.512 for maintaining records of
17 the employment history of all persons referred for contract
18 and is subject to the standards and conditions set forth in
19 that section. However, an initial screening may not be
20 required for persons who have been continuously registered
21 with the nurse registry since September 30, 1990.

22 (9)~~(14)~~ The nurse registry must maintain the
23 application on file, and that file must be open to the
24 inspection of the Agency for Health Care Administration. The
25 nurse registry must maintain on file the name and address of
26 the client to whom the nurse or other nurse registry personnel
27 is sent for contract and the amount of the fee received by the
28 nurse registry. A nurse registry must maintain the file that
29 includes the application and other applicable documentation
30 for 3 years after the date of the last file entry of
31 client-related information.

1 (10)~~(15)~~ Nurse registries shall assist persons who
2 would need assistance and sheltering during evacuations
3 because of physical, mental, or sensory disabilities in
4 registering with the appropriate local emergency management
5 agency pursuant to s. 252.355.

6 (11)~~(16)~~ Each nurse registry shall prepare and
7 maintain a comprehensive emergency management plan that is
8 consistent with the criteria in this subsection and with the
9 local special needs plan. The plan shall be updated annually.
10 The plan shall specify how the nurse registry shall facilitate
11 the provision of continuous care by persons referred for
12 contract to persons who are registered pursuant to s. 252.355
13 during an emergency that interrupts the provision of care or
14 services in private residences.

15 (a) All persons referred for contract who care for
16 persons registered pursuant to s. 252.355 must include in the
17 patient record a description of how care will be continued
18 during a disaster or emergency that interrupts the provision
19 of care in the patient's home. It shall be the responsibility
20 of the person referred for contract to ensure that continuous
21 care is provided.

22 (b) Each nurse registry shall maintain a current
23 prioritized list of patients in private residences who are
24 registered pursuant to s. 252.355 and are under the care of
25 persons referred for contract and who need continued services
26 during an emergency. This list shall indicate, for each
27 patient, if the client is to be transported to a special needs
28 shelter and if the patient is receiving skilled nursing
29 services. Nurse registries shall make this list available to
30 county health departments and to local emergency management
31 agencies upon request.

1 (c) Each person referred for contract who is caring
2 for a patient who is registered pursuant to s. 252.355 shall
3 provide a list of the patient's medication and equipment needs
4 to the nurse registry. Each person referred for contract shall
5 make this information available to county health departments
6 and to local emergency management agencies upon request.

7 (d) Each person referred for contract shall not be
8 required to continue to provide care to patients in emergency
9 situations that are beyond the person's control and that make
10 it impossible to provide services, such as when roads are
11 impassable or when patients do not go to the location
12 specified in their patient records.

13 (e) The comprehensive emergency management plan
14 required by this subsection is subject to review and approval
15 by the county health department. During its review, the county
16 health department shall ensure that, at a minimum, the local
17 emergency management agency, the Agency for Health Care
18 Administration, and the local chapter of the American Red
19 Cross or other lead sheltering agency are given the
20 opportunity to review the plan. The county health department
21 shall complete its review within 60 days after receipt of the
22 plan and shall either approve the plan or advise the nurse
23 registry of necessary revisions.

24 (f) The Agency for Health Care Administration shall
25 adopt rules establishing minimum criteria for the
26 comprehensive emergency management plan and plan updates
27 required by this subsection, with the concurrence of the
28 Department of Health and in consultation with the Department
29 of Community Affairs.

30
31

1 (12)~~(17)~~ All persons referred for contract in private
2 residences by a nurse registry must comply with the following
3 requirements for a plan of treatment:

4 (a) When, in accordance with the privileges and
5 restrictions imposed upon a nurse under part I of chapter 464,
6 the delivery of care to a patient is under the direction or
7 supervision of a physician or when a physician is responsible
8 for the medical care of the patient, a medical plan of
9 treatment must be established for each patient receiving care
10 or treatment provided by a licensed nurse in the home. The
11 original medical plan of treatment must be timely signed by
12 the physician and reviewed by him or her in consultation with
13 the licensed nurse at least every 2 months. Any additional
14 order or change in orders must be obtained from the physician
15 and reduced to writing and timely signed by the physician.
16 The delivery of care under a medical plan of treatment must be
17 substantiated by the appropriate nursing notes or
18 documentation made by the nurse in compliance with nursing
19 practices established under part I of chapter 464.

20 (b) Whenever a medical plan of treatment is
21 established for a patient, the initial medical plan of
22 treatment, any amendment to the plan, additional order or
23 change in orders, and copy of nursing notes must be filed in
24 the office of the nurse registry.

25 (13)~~(18)~~ The nurse registry must comply with the
26 notice requirements of s. 400.495, relating to abuse
27 reporting.

28 (14)~~(19)~~ In addition to any other penalties imposed
29 pursuant to this section or part, the agency may assess costs
30 related to an investigation that results in a successful
31 prosecution, ~~excluding costs associated with an attorney's~~

1 ~~time. If the agency imposes such an assessment and the~~
2 ~~assessment is not paid, and if challenged is not the subject~~
3 ~~of a pending appeal, prior to the renewal of the license, the~~
4 ~~license shall not be issued until the assessment is paid or~~
5 ~~arrangements for payment of the assessment are made.~~

6 (15)(20) The Agency for Health Care Administration
7 shall adopt rules to implement this section and part II of
8 chapter 408.

9 Section 108. Section 400.509, Florida Statutes, is
10 amended to read:

11 400.509 Registration of particular service providers
12 exempt from licensure; certificate of registration; regulation
13 of registrants.--

14 (1) Any organization that provides companion services
15 or homemaker services and does not provide a home health
16 service to a person is exempt from licensure under this part.
17 However, any organization that provides companion services or
18 homemaker services must register with the agency.

19 (2) The requirements of part II of chapter 408 apply
20 to the provision of services that necessitate registration or
21 licensure pursuant to ss. 400.509-400.512 and ss.
22 408.801-408.819 and to entities registered by or applying for
23 such registration from the Agency for Health Care
24 Administration pursuant to ss. 400.509-400.512. Each applicant
25 for registration must comply with all provisions of part II of
26 chapter 408, with the exception of s. 408.810(6)-(10).

27 ~~Registration consists of annually filing with the agency,~~
28 ~~under oath, on forms provided by it, the following~~
29 ~~information:~~

30
31

1 ~~(a) If the registrant is a firm or partnership, the~~
2 ~~name, address, date of birth, and social security number of~~
3 ~~every member.~~

4 ~~(b) If the registrant is a corporation or association,~~
5 ~~its name and address; the name, address, date of birth, and~~
6 ~~social security number of each of its directors and officers;~~
7 ~~and the name and address of each person having at least a 5~~
8 ~~percent interest in the corporation or association.~~

9 ~~(c) The name, address, date of birth, and social~~
10 ~~security number of each person employed by or under contract~~
11 ~~with the organization.~~

12 (3) In accordance with s. 408.805, an applicant or
13 registrant shall pay a fee for each registration issued under
14 this part and part II of chapter 408. The amount of the fee
15 shall be \$50 per biennium.~~The agency shall charge a~~
16 ~~registration fee of \$25 to be submitted with the information~~
17 ~~required under subsection (2).~~

18 ~~(4) Each applicant for registration must comply with~~
19 ~~the following requirements:~~

20 ~~(a) Upon receipt of a completed, signed, and dated~~
21 ~~application, the agency shall require background screening, in~~
22 ~~accordance with the level 1 standards for screening set forth~~
23 ~~in chapter 435, of every individual who will have contact with~~
24 ~~the client. The agency shall require background screening of~~
25 ~~the managing employee or other similarly titled individual who~~
26 ~~is responsible for the operation of the entity, and of the~~
27 ~~financial officer or other similarly titled individual who is~~
28 ~~responsible for the financial operation of the entity,~~
29 ~~including billings for client services in accordance with the~~
30 ~~level 2 standards for background screening as set forth in~~
31 ~~chapter 435.~~

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

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

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

31

1 ~~not been requested of and granted by the agency as set forth~~
2 ~~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 may 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 which~~
13 ~~was committed by a member of the board of directors of the~~
14 ~~applicant, its officers, or any individual owning 5 percent or~~
15 ~~more of the applicant. This requirement does not apply to a~~
16 ~~director of a not-for-profit corporation or organization who~~
17 ~~serves solely in a voluntary capacity for the corporation or~~
18 ~~organization, does not regularly take part in the day-to-day~~
19 ~~operational decisions of the corporation or organization,~~
20 ~~receives no remuneration for his or her services on the~~
21 ~~corporation's or organization's board of directors, and has no~~
22 ~~financial interest and no family members having a financial~~
23 ~~interest in the corporation or organization, if the director~~
24 ~~and the not-for-profit corporation or organization include in~~
25 ~~the application a statement affirming that the director's~~
26 ~~relationship to the corporation satisfies the requirements of~~
27 ~~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 of~~
5 ~~any applicant who:~~

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 licensure renewal must contain~~
14 ~~the information required under paragraphs (e) and (f).~~

15 (4)~~(5)~~ Each registrant must obtain the employment or
16 contract history of persons who are employed by or under
17 contract with the organization and who will have contact at
18 any time with patients or clients in their homes by:

19 (a) Requiring such persons to submit an employment or
20 contractual history to the registrant; and

21 (b) Verifying the employment or contractual history,
22 unless through diligent efforts such verification is not
23 possible. The agency shall prescribe by rule the minimum
24 requirements for establishing that diligent efforts have been
25 made.

26
27 There is no monetary liability on the part of, and no cause of
28 action for damages arises against, a former employer of a
29 prospective employee of or prospective independent contractor
30 with a registrant who reasonably and in good faith
31 communicates his or her honest opinions about the former

1 employee's or contractor's job performance. This subsection
2 does not affect the official immunity of an officer or
3 employee of a public corporation.

4 ~~(6) On or before the first day on which services are~~
5 ~~provided to a patient or client, any registrant under this~~
6 ~~part must inform the patient or client and his or her~~
7 ~~immediate family, if appropriate, of the right to report~~
8 ~~abusive, neglectful, or exploitative practices. The statewide~~
9 ~~toll-free telephone number for the central abuse hotline must~~
10 ~~be provided to patients or clients in a manner that is clearly~~
11 ~~legible and must include the words: "To report abuse, neglect,~~
12 ~~or exploitation, please call toll-free ... (phone number)...."~~
13 ~~Registrants must establish appropriate policies and procedures~~
14 ~~for providing such notice to patients or clients.~~

15 ~~(7) The provisions of s. 400.512 regarding screening~~
16 ~~apply to any person or business entity registered under this~~
17 ~~section on or after October 1, 1994.~~

18 ~~(8) Upon verification that all requirements for~~
19 ~~registration have been met, the Agency for Health Care~~
20 ~~Administration shall issue a certificate of registration valid~~
21 ~~for no more than 1 year.~~

22 ~~(9) The Agency for Health Care Administration may~~
23 ~~deny, suspend, or revoke the registration of a person that:~~

24 ~~(a) Fails to comply with this section or applicable~~
25 ~~rules.~~

26 ~~(b) Commits an intentional, reckless, or negligent act~~
27 ~~that materially affects the health or safety of a person~~
28 ~~receiving services.~~

29 ~~(10) The Agency for Health Care Administration may~~
30 ~~institute injunctive proceedings under s. 400.515.~~

31

1 (5)~~(11)~~ A person that offers or advertises to the
2 public a service for which registration is required must
3 include in its advertisement the registration number issued by
4 the Agency for Health Care Administration.

5 ~~(12) It is unlawful for a person to offer or advertise~~
6 ~~to the public services, as defined by rule, without obtaining~~
7 ~~a certificate of registration from the Agency for Health Care~~
8 ~~Administration. It is unlawful for any holder of a~~
9 ~~certificate of registration to advertise or hold out to the~~
10 ~~public that he or she holds a certificate of registration for~~
11 ~~other than that for which he or she actually holds a~~
12 ~~certificate of registration. Any person who violates this~~
13 ~~subsection is subject to injunctive proceedings under s.~~
14 ~~400.515.~~

15 ~~(13) Any duly authorized officer or employee of the~~
16 ~~Agency for Health Care Administration has the right to make~~
17 ~~such inspections and investigations as are necessary in order~~
18 ~~to respond to complaints or to determine the state of~~
19 ~~compliance with this section and applicable rules.~~

20 ~~(a) If, in responding to a complaint, an officer or~~
21 ~~employee of the Agency for Health Care Administration has~~
22 ~~reason to believe that a crime has been committed, he or she~~
23 ~~shall notify the appropriate law enforcement agency.~~

24 ~~(b) If, in responding to a complaint, an officer or~~
25 ~~employee of the Agency for Health Care Administration has~~
26 ~~reason to believe that abuse, neglect, or exploitation has~~
27 ~~occurred, according to the definitions in chapter 415, he or~~
28 ~~she shall file a report under chapter 415.~~

29 (6)~~(14)~~ In addition to any other penalties imposed
30 pursuant to this section or part, the agency may assess costs
31 related to an investigation that results in a successful

1 prosecution, excluding costs associated with an attorney's
2 time. If the agency imposes such an assessment and the
3 assessment is not paid, and if challenged is not the subject
4 of a pending appeal, prior to the renewal of the registration,
5 the registration shall not be issued until the assessment is
6 paid or arrangements for payment of the assessment are made.

7 ~~(7)(15)~~ The Agency for Health Care Administration
8 shall adopt rules to administer this section and part II of
9 chapter 408.

10 (8) Notwithstanding the penalties provided in s.
11 408.812(3), any registrant that provides personal care to a
12 client in the client's private residence commits a misdemeanor
13 of the first degree, punishable as provided in s. 775.082 or
14 s. 775.083, if the client's residence is not a facility
15 licensed in accordance with part II of chapter 408. Section
16 408.812 applies to all other unlicensed activity by a
17 registrant, including the offering or advertising of any
18 service that necessitates licensure under part II of chapter
19 408.

20 Section 109. Subsections (2) and (7) of section
21 400.512, Florida Statutes, are amended to read:

22 400.512 Screening of home health agency personnel;
23 nurse registry personnel; and companions and homemakers.--The
24 agency shall require employment or contractor screening as
25 provided in chapter 435, using the level 1 standards for
26 screening set forth in that chapter, for home health agency
27 personnel; persons referred for employment by nurse
28 registries; and persons employed by companion or homemaker
29 services registered under s. 400.509.

30 ~~(2) The administrator of each home health agency, the~~
31 ~~managing employee of each nurse registry, and the managing~~

1 ~~employee of each companion or homemaker service registered~~
2 ~~under s. 400.509 must sign an affidavit annually, under~~
3 ~~penalty of perjury, stating that all personnel hired,~~
4 ~~contracted with, or registered on or after October 1, 1994,~~
5 ~~who enter the home of a patient or client in their service~~
6 ~~capacity have been screened and that its remaining personnel~~
7 ~~have worked for the home health agency or registrant~~
8 ~~continuously since before October 1, 1994.~~

9 (7)(a) 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 1. 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 such person's
16 qualifications to be an employee under this section;

17 ~~2. Operate or attempt to operate an entity licensed or~~
18 ~~registered under this part with persons who do not meet the~~
19 ~~minimum standards for good moral character as contained in~~
20 ~~this section.~~

21 2.3. Use information from the criminal records
22 obtained under this section for any purpose other than
23 screening that person for employment as specified in this
24 section or release such information to any other person for
25 any purpose other than screening for employment under this
26 section.

27 (b) It is a felony of the third degree, punishable
28 under s. 775.082, s. 775.083, or s. 775.084, for any person
29 willfully, knowingly, or intentionally to use information from
30 the juvenile records of a person obtained under this section

31

1 for any purpose other than screening for employment under this
2 section.

3 Section 110. Section 400.515, Florida Statutes, is
4 repealed.

5 Section 111. Subsections (6) and (7) of section
6 400.551, Florida Statutes, are amended to read:

7 400.551 Definitions.--As used in this part, the term:

8 (6) "Operator" means the licensee or person having
9 general administrative charge of an adult day care center.

10 (7) "Owner" means the licensee ~~owner~~ of an adult day
11 care center.

12 Section 112. Section 400.554, Florida Statutes, is
13 amended to read:

14 400.554 License requirement; fee; exemption;
15 display.--

16 (1) The requirements of part II of chapter 408 apply
17 to the provision of services that necessitate licensure
18 pursuant to this part and part II of chapter 408 and to
19 entities licensed by or applying for such licensure from the
20 Agency for Health Care Administration pursuant to this part.
21 However, an applicant for licensure is exempt from the
22 provisions of s. 408.810(10).~~It is unlawful to operate an~~
23 ~~adult day care center without first obtaining from the agency~~
24 ~~a license authorizing such operation. The agency is~~
25 ~~responsible for licensing adult day care centers in accordance~~
26 ~~with this part.~~

27 (2) Separate licenses are required for centers
28 operated on separate premises, even though operated under the
29 same management. Separate licenses are not required for
30 separate buildings on the same premises.

31

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 ~~fines; 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.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 1680

4 In addition to many technical changes, the Committee
5 Substitute made the following substantive changes to CS/SB
6 1680:

- 6 1. Removes from the bill, the authority given to ACHA to
7 issue licenses for less than two years, charging a
8 prorated fee, and adjusting the renewal date for the
9 purposes of transitioning affected providers from a
10 one-year to two-year licensure cycle.
- 9 2. A provisional license may no longer be issued by ACHA
10 when the applicant is in substantial compliance with
11 statutory requirements and applicable rules.
- 11 3. Removes from the bill, the court's authority to require
12 ACHA to issue a temporary license for the duration of the
13 judicial proceedings if a final agency action is
14 appealed.
- 14 4. Removes from the bill, the requirement that clients must
15 be given their records at final discharge.
- 15 5. Provides that any registrant offering personal care to a
16 client in the client's private residence commits a
17 misdemeanor of the first degree if the client's residence
18 is not a licensed facility.
- 17 6. Provides that the "watch list" must include the
18 cumulative number and percentage of days the facility had
19 a conditional license and was on a watch list in the past
20 30 months.
- 20 7. Removes ACHA's authority to establish, by rule,
21 conditions that constitute grounds for imposing a
22 moratorium or emergency suspension. The bill states that
23 moratoria and emergency suspension are specific to the
24 facts of each case, not of general applicability, and
25 therefore not subject to rule making under chapter 120.