

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

1 centers to be in compliance with part II of ch.
2 408, F.S.; providing for licensure fees;
3 authorizing the agency to adopt rules;
4 providing for administrative fines; conforming
5 provisions with the requirements of part II of
6 ch. 408, F.S.; amending ss. 390.011, 390.012,
7 390.014, and 390.018, F.S., and repealing ss.
8 390.013, 390.015, 390.016, 390.017, 390.019,
9 and 390.021, F.S., relating to the regulation
10 of abortion clinics; requiring abortion clinics
11 to be in compliance with part II of ch. 408,
12 F.S.; providing for licensure fees; authorizing
13 the 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. 394.455, F.S., relating to
17 the Florida Mental Health Act; clarifying a
18 definition; amending ss. 394.67, 394.875,
19 394.877, 394.878, 394.879, 394.90, and 394.902,
20 F.S., and repealing s. 394.876, F.S., relating
21 to the Community Substance Abuse and Mental
22 Health Services Act; defining the term
23 "short-term residential treatment facility";
24 requiring substance abuse or mental health
25 facilities, programs, and services to be in
26 compliance with part II of ch. 408, F.S.;
27 providing for licensure fees; authorizing the
28 agency to adopt rules; providing for
29 administrative penalties; conforming provisions
30 with the requirements of part II of ch. 408,
31 F.S.; amending ss. 395.003, 395.004, 395.0161,

1 395.0163, 395.0199, 395.1046, 395.1055, and
2 395.1065, F.S., and repealing ss. 395.002(4),
3 395.0055, and 395.0162, F.S., relating to
4 hospitals and other licensed facilities;
5 requiring hospitals and other licensed
6 facilities to be in compliance with part II of
7 ch. 408, F.S.; providing for licensure fees;
8 authorizing the agency to adopt rules;
9 providing for administrative fines; conforming
10 provisions with the requirements of part II of
11 ch. 408, F.S.; amending s. 395.1041, F.S.;
12 requiring a facility licensed under ch. 395,
13 F.S., to withhold or withdraw cardiopulmonary
14 resuscitation when presented with an order not
15 to resuscitate; creating s. 395.10411, F.S.;
16 providing requirements to be carried out by a
17 facility licensed under ch. 395, F.S., when a
18 patient has an advance directive, has an order
19 not to resuscitate, or is a designated organ
20 donor; amending s. 765.1105, F.S.; requiring a
21 health care provider that refuses to carry out
22 a patient's advance directive to transfer the
23 patient within a specified time to a health
24 care provider that will comply with the advance
25 directive; creating s. 765.1021, F.S., to
26 encourage physicians and patients to discuss
27 end-of-life care and to specify when an advance
28 directive be part of the patient's medical
29 record; amending s. 765.304, F.S.; requiring an
30 attending physician who refuses to comply with
31 a person's living will to transfer the person

1 to a physician who will comply; amending s.
2 395.0197, F.S.; providing that a health care
3 facility must use the services of, rather than
4 hire, a risk manager; restricting the number of
5 internal risk management programs in separate
6 hospitals which may be the responsibility of a
7 risk manager; providing exceptions; amending
8 ss. 395.10973, 395.10974, and 395.10975, F.S.,
9 relating to health care risk managers;
10 requiring health care risk managers to comply
11 with part II of ch. 408, F.S.; providing for
12 fees; authorizing the agency to adopt rules;
13 providing for administrative fines; conforming
14 provisions with the requirements of part II of
15 ch. 408, F.S.; amending s. 400.21, F.S.;
16 providing that certain registered nurses may
17 sign a resident care plan; amending ss.
18 400.022, 400.051, 400.062, 400.063, 400.071,
19 400.102, 400.111, 400.1183, 400.121, 400.141,
20 400.17, 400.179, 400.18, 400.19, 400.191,
21 400.20, 400.211, and 400.23, F.S., and
22 repealing ss. 400.021(5) and (20), 400.125, and
23 400.241(1) and (2), F.S., relating to nursing
24 homes; requiring nursing homes 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; revising reporting
29 requirements; conforming provisions with the
30 requirements of part II of ch. 408, F.S.;
31 creating s. 400.0712, F.S.; authorizing the

1 Agency for Health Care Administration to issue
2 an inactive license to a nursing home facility
3 for all or a portion of its beds; providing
4 procedures when applying for an inactive
5 license; permitting the agency to issue an
6 inactive license to a nursing home that chooses
7 to use an unoccupied contiguous portion of the
8 facility for an alternative use to meet the
9 needs of elderly persons through the use of
10 less restrictive, less institutional services;
11 providing that an inactive license issued may
12 be granted for specified periods of time;
13 directing that a nursing home that receives an
14 inactive license to provide alternative
15 services may not receive preference for
16 participation in the Assisted Living for the
17 Elderly Medicaid waiver; providing that
18 reactivation of an inactive license requires
19 the applicant to meet certain specified
20 conditions; amending ss. 400.402, 400.407,
21 400.4075, 400.408, 400.411, 400.412, 400.414,
22 400.417, 400.4174, 400.4176, 400.418, 400.419,
23 400.42, 400.424, 400.4255, 400.4256, 400.427,
24 400.4275, 400.431, 400.434, 400.441, 400.442,
25 400.444, 400.452, and 400.454, F.S., and
26 repealing ss. 400.415, 400.4178(7), 400.435(1),
27 400.447(1), (2), and (3), and 400.451, F.S.,
28 relating to assisted living facilities;
29 requiring assisted living facilities to be in
30 compliance with part II of ch. 408, F.S.;

31 providing for licensure fees; requiring

1 assisted living facilities to conduct resident
2 elopement prevention and response drills;
3 authorizing the agency to adopt rules;
4 providing for administrative fines; conforming
5 provisions with the requirements of part II of
6 ch. 408, F.S.; amending ss. 400.464, 400.471,
7 400.474, 400.484, 400.494, 400.495, 400.497,
8 400.506, 400.509, and 400.512, F.S., and
9 repealing s. 400.515, F.S., relating to home
10 health agencies and nurse registries; requiring
11 home health agencies and nurse registries to be
12 in compliance with part II of ch. 408, F.S.;
13 providing for licensure fees; authorizing the
14 agency to adopt rules; providing for
15 administrative fines; conforming provisions
16 with the requirements of part II of ch. 408,
17 F.S.; amending ss. 400.551, 400.554, 400.555,
18 400.556, 400.5565, 400.557, 400.5572, 400.559,
19 400.56, and 400.562, F.S., and repealing ss.
20 400.5575, 400.558, and 400.564, F.S., relating
21 to adult day care centers; requiring adult day
22 care centers to be in compliance with part II
23 of ch. 408, F.S.; providing for licensure fees;
24 authorizing the agency to adopt rules;
25 providing for administrative fines; conforming
26 provisions with the requirements of part II of
27 ch. 408, F.S.; amending ss. 400.602, 400.605,
28 400.606, 400.6065, 400.607, and 400.6095, F.S.,
29 relating to hospices; requiring hospices to be
30 in compliance with part II of ch. 408, F.S.;
31 providing for licensure fees; authorizing the

1 agency to adopt rules; providing for
2 administrative fines; conforming provisions
3 with the requirements of part II of ch. 408,
4 F.S.; amending ss. 400.617, 400.619, 400.6194,
5 400.6196, 400.621, 400.6211, and 400.625, F.S.,
6 and repealing s. 400.622, F.S., relating to
7 adult family-care homes; requiring adult
8 family-care homes to be in compliance with part
9 II of ch. 408, F.S.; providing for licensure
10 fees; authorizing the agency to adopt rules;
11 providing for administrative fines; conforming
12 provisions with the requirements of part II of
13 ch. 408, F.S.; amending ss. 400.801 and
14 400.805, F.S., relating to homes for special
15 services and transitional living facilities;
16 requiring such homes and facilities to be in
17 compliance with part II of ch. 408, F.S.;

18 providing for licensure fees; authorizing the
19 agency to adopt rules; providing for
20 administrative fines; conforming provisions
21 with the requirements of part II of ch. 408,
22 F.S.; amending ss. 400.902, 400.903, 400.905,
23 400.907, 400.908, 400.912, 400.914, and
24 400.915, F.S., and repealing ss. 400.906,
25 400.910, 400.911, 400.913, 400.916, and
26 400.917, F.S., relating to prescribed pediatric
27 extended care centers; requiring such centers
28 to be in compliance with part II of ch. 408,
29 F.S.; providing for licensure fees; authorizing
30 the agency to adopt rules; providing for
31 administrative fines; conforming provisions

1 with the requirements of part II of ch. 408,
2 F.S.; amending ss. 400.925, 400.93, 400.931,
3 400.932, 400.933, and 400.935, F.S., and
4 repealing ss. 400.95, 400.953(2), 400.955(4),
5 and 400.956, F.S., relating to home medical
6 equipment providers; requiring home medical
7 equipment providers to be in compliance with
8 part II of ch. 408, F.S.; providing for
9 licensure fees; authorizing the agency to adopt
10 rules; providing for administrative fines;
11 conforming provisions with the requirements of
12 part II of ch. 408, F.S.; amending ss. 400.960,
13 400.962, 400.967, 400.968, and 400.969, F.S.,
14 and repealing ss. 400.963 and 400.965, F.S.,
15 relating to intermediate care facilities for
16 the developmentally disabled; requiring such
17 facilities to be in compliance with part II of
18 ch. 408, F.S.; providing for licensure fees;
19 authorizing the agency to adopt rules;
20 providing for administrative fines; conforming
21 provisions with the requirements of part II of
22 ch. 408, F.S.; amending s. 400.908, F.S.;
23 requiring health care services pools to be in
24 compliance with part II of ch. 408, F.S.;
25 providing for licensure fees; authorizing the
26 agency to adopt rules; providing for
27 administrative fines; conforming provisions
28 with the requirements of part II of ch. 408,
29 F.S.; amending ss. 400.991, 400.9915, 400.992,
30 400.9925, 400.993, 400.9935, and 400.995, F.S.,
31 and repealing ss. 400.9905(2), 400.994, and

1 400.9945, F.S., relating to health care
2 clinics; requiring health care clinics to be in
3 compliance with part II of ch. 408, F.S.;
4 providing for licensure fees; authorizing the
5 agency to adopt rules; providing for
6 administrative fines; conforming provisions
7 with the requirements of part II of ch. 408,
8 F.S.; amending s. 408.036, F.S.; revising the
9 prerequisites for allowing an exemption from
10 certificate-of-need review for adding skilled
11 nursing facility beds to a licensed skilled
12 nursing facility or for construction of a
13 skilled nursing facility; allowing such an
14 exemption only in counties having a specified
15 maximum population; amending s. 408.831, F.S.,
16 relating to the authority of the Agency for
17 Health Care Administration to impose certain
18 penalties against a regulated or licensed
19 entity; conforming provisions to changes made
20 by the act; amending s. 440.102, F.S., relating
21 to the drug-free workplace program; requiring
22 laboratories to be in compliance with the
23 requirements of part II of ch. 408, F.S.;
24 conforming provisions to changes made by the
25 act; amending s. 468.711, F.S.; deleting the
26 requirement that continuing education for
27 athletic trainers include first aid; amending
28 s. 468.723, F.S.; revising exemptions from
29 licensure requirements; amending s. 1012.46,
30 F.S.; providing that a first responder for a
31 school district may not represent himself or

1 herself as an athletic trainer; amending ss.
2 483.035, 483.051, 483.061, 483.091, 483.101,
3 483.111, 483.172, 483.201, 483.221, and 483.23,
4 F.S., and repealing ss. 483.131 and 483.25,
5 F.S., relating to clinical laboratories;
6 requiring clinical laboratories to be in
7 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. 483.291, 483.294, 483.30,
13 483.302, and 483.32, F.S., and repealing ss.
14 483.311, 483.317(1), 483.322(1), and 483.328,
15 F.S., relating to multiphasic health testing
16 centers; requiring such centers to be in
17 compliance with part II of ch. 408, F.S.;
18 providing for licensure fees; authorizing the
19 agency to adopt rules; providing for
20 administrative fines; conforming provisions
21 with the requirements of part II of ch. 408,
22 F.S.; providing for ss. 408.801-408.819, F.S.,
23 to prevail in the case of a conflict with other
24 laws governing the licensure of health care
25 providers by the agency; authorizing the agency
26 to issue a license for less than a specified
27 period and to charge a prorated fee; amending
28 s. 651.118, F.S.; revising standards for use of
29 sheltered nursing home beds by certain persons;
30 providing an effective date.

31

1 Be It Enacted by the Legislature of the State of Florida:

2
3 Section 1. Part I of chapter 408, Florida Statutes,
4 consisting of sections 408.02, 408.031, 408.032, 408.033,
5 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038,
6 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045,
7 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08,
8 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20,
9 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057,
10 and 408.7071, is created and entitled "Health Facility and
11 Services Planning."

12 Section 2. Part II of chapter 408, Florida Statutes,
13 consisting of sections 408.801, 408.802, 408.803, 408.804,
14 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
15 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
16 408.819, and 408.831, is created and entitled "Health Care
17 Licensing: General Provisions."

18 Section 3. Part III of chapter 408, Florida Statutes,
19 consisting of sections 408.90, 408.901, 408.902, 408.903,
20 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909, is
21 created and entitled "Health Insurance Access."

22 Section 4. Part IV of chapter 408, Florida Statutes,
23 consisting of sections 408.911, 408.913, 408.914, 408.915,
24 408.916, 408.917, and 408.918, is created and entitled "Health
25 and Human Services Eligibility Access System."

26 Section 5. Sections 408.801 through 408.819, Florida
27 Statutes, are created to read:

28 408.801 Short title; purpose.--

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

31

1 (2) The Legislature finds that there is unnecessary
2 duplication and variation in the requirements for licensure by
3 the Agency for Health Care Administration, brought about by
4 the historical pattern of legislative action focused
5 exclusively on a single type of regulated provider. It is the
6 intent of the Legislature to provide a streamlined and
7 consistent set of basic licensing requirements for all such
8 providers in order to minimize confusion, standardize
9 terminology, and include issues that are otherwise not
10 adequately addressed in the statutes pertaining to specific
11 providers.

12 408.802 Applicability.--The provisions of this part
13 apply to the provision of services that necessitate licensure
14 as defined in this part and to the following entities licensed
15 or registered by the Agency for Health Care Administration, as
16 further described in chapters 112, 383, 390, 394, 395, 400,
17 440, and 483:

18 (1) Laboratories authorized to perform testing under
19 the Drug-Free Workplace Act, as provided under ss. 112.0455
20 and 440.102.

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

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

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

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

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

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

31

- 1 (8) Hospitals, as provided under part I of chapter
2 395.
- 3 (9) Ambulatory surgical centers, as provided under
4 part I of chapter 395.
- 5 (10) Mobile surgical facilities, as provided under
6 part I of chapter 395.
- 7 (11) Private review agents, as provided under part I
8 of chapter 395.
- 9 (12) Health care risk managers, as provided under part
10 I of chapter 395.
- 11 (13) Nursing homes, as provided under part II of
12 chapter 400.
- 13 (14) Assisted living facilities, as provided under
14 part III of chapter 400.
- 15 (15) Home health agencies, as provided under part IV
16 of chapter 400.
- 17 (16) Nurse registries, as provided under part IV of
18 chapter 400.
- 19 (17) Companion services or homemaker services
20 providers, as provided under part IV of chapter 400.
- 21 (18) Adult day care centers, as provided under part V
22 of chapter 400.
- 23 (19) Hospices, as provided under part VI of chapter
24 400.
- 25 (20) Adult family-care homes, as provided under part
26 VII of chapter 400.
- 27 (21) Homes for special services, as provided under
28 part VIII of chapter 400.
- 29 (22) Transitional living facilities, as provided under
30 part VIII of chapter 400.
- 31

1 (23) Prescribed pediatric extended care centers, as
2 provided under part IX of chapter 400.

3 (24) Home medical equipment providers, as provided
4 under part X of chapter 400.

5 (25) Intermediate care facilities for the
6 developmentally disabled, as provided under part XI of chapter
7 400.

8 (26) Health care services pools, as provided under
9 part XII of chapter 400.

10 (27) Health care clinics, as provided under part XIII
11 of chapter 400.

12 (28) Clinical laboratories, as provided under part I
13 of chapter 483.

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

16 408.803 Definitions.--As used in this part, the term:

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

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

22 (3) "Authorizing statute" means the statute
23 authorizing the licensed operation of a provider listed in s.
24 408.802.

25 (4) "Certification" means certification as a Medicare
26 or Medicaid provider of the services that necessitate
27 licensure or certification pursuant to the federal Clinical
28 Laboratory Improvement Amendments (CLIA).

29 (5) "Change of ownership" means an event in which the
30 licensee changes to a different legal entity or in which 45
31 percent or more of the ownership or voting shares is

1 transferred or assigned, including the final transfer or
2 assignment of multiple transfers or assignments over a 2-year
3 period which cumulatively total 45 percent or greater.

4 However, a change solely in the management company is not a
5 change of ownership.

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

8 (7) "Controlling interest" means:

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

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

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

18
19 The term does not include a voluntary board member.

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

22 (9) "Licensee" means an individual, corporation,
23 partnership, firm, association, or governmental entity that is
24 issued a permit, registration, certificate, or license by the
25 agency. The licensee is legally responsible for all aspects of
26 the provider operation.

27 (10) "Moratorium" means a prohibition on the
28 acceptance of new clients.

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

31

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

5 (13) "Voluntary board member" means a board member of
6 a not-for-profit corporation or organization who serves solely
7 in a voluntary capacity for the licensee, does not receive any
8 remuneration for his or her services on the board of
9 directors, and has no financial interest in the corporation or
10 organization. The agency shall recognize a person as a
11 voluntary board member following submission of a statement to
12 the agency by the board member and the not-for-profit
13 corporation or organization which affirms that the board
14 member conforms to this definition. The statement affirming
15 the status of the board member must be submitted to the agency
16 on a form provided by the agency.

17 408.804 License required; display.--

18 (1) It is unlawful to provide services that
19 necessitate licensure, or operate or maintain a provider
20 offering or providing services that necessitate licensure,
21 without first obtaining from the agency a license authorizing
22 such operation.

23 (2) A license must be displayed in a conspicuous place
24 readily visible to clients who enter at the address that
25 appears on the license and is valid only in the hands of the
26 individual, firm, partnership, association, or corporation to
27 whom it is issued and may not be sold, assigned, or otherwise
28 transferred, voluntarily or involuntarily. The license is
29 valid only for the licensee, provider, and location for which
30 the license is originally issued.

31

1 408.805 Fees required; adjustments.--Unless otherwise
2 limited by authorizing statutes, license fees must be
3 reasonably calculated by the agency to cover its costs in
4 carrying out its responsibilities under this part, authorizing
5 statutes, and applicable rules, including the cost of
6 licensure, inspection, and regulation of providers, and must
7 be of such amount that the total fees collected do not exceed
8 the cost of administering and enforcing compliance with this
9 part, authorizing statutes, and applicable rules.

10 (1) Licensure fees shall be adjusted for biennial
11 licensure in agency rules.

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

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

19 (4) An inspection fee must be paid as required in
20 authorizing statutes.

21 (5) Licensure and inspection fees are nonrefundable.

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

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

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

31 408.806 License application process.--

1 (1) An application for licensure must be made to the
2 agency on forms furnished by the agency, submitted under oath,
3 and accompanied by the appropriate license fee in order to be
4 accepted and considered timely. The application must contain
5 information required by authorizing statutes and applicable
6 rules and must include:

7 (a) The name, address, and social security number of
8 the applicant and each controlling interest if the applicant
9 or controlling interest is an individual.

10 (b) The name, address, and federal employer
11 identification number or taxpayer identification number of the
12 applicant and each controlling interest if the applicant or
13 controlling interest is not an individual.

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

15 (d) The total number of beds or capacity requested, as
16 applicable.

17 (e) The location of the provider for which application
18 is made, a report or letter from the zoning authority
19 indicating the location is zoned appropriately for its use,
20 and a satisfactory fire safety report from the local authority
21 having jurisdiction or the state fire marshal. If the provider
22 is a community residential home under chapter 419, the zoning
23 requirement must be satisfied by proof of compliance with
24 chapter 419.

25 (f) The name of the person or persons under whose
26 management or supervision the provider will be operated and
27 the name of the administrator if required.

28 (g) Any information that the agency finds is necessary
29 to determine the ability of the applicant to carry out its
30 responsibilities, including satisfactory inspection results,
31

1 under this part and authorizing statutes, as specified in
2 rule.

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

6 (b) The applicant for initial licensure due to a
7 change of ownership must submit an application that must be
8 received by the agency at least 60 days prior to the date of
9 change of ownership.

10 (c) For any other application or request, the
11 applicant must submit an application or request that must be
12 received by the agency at least 60 days prior to the requested
13 effective date, unless otherwise specified in authorizing
14 statutes or rules.

15 (3) Upon receipt of an application for a license, the
16 agency shall examine the application and, within 30 days after
17 receipt, notify the applicant in writing of any apparent
18 errors or omissions and request any additional information
19 required.

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

26 (5) Licensees subject to the provisions of this part
27 shall be issued biennial licenses unless conditions of the
28 license category specify a shorter license period. The agency
29 may not issue an initial license to a health care provider
30 subject to the certificate-of-need provisions in ss.
31 408.031-408.045 if the licensee has not been issued a

1 certificate of need or exemption, when applicable. Failure to
2 apply for the renewal of a license prior to the expiration
3 date renders the license null and void and the former licensee
4 may not be issued a new license unless the licensee reapplies
5 for an initial license and meets all current qualifications
6 for licensure, including construction standards for facilities
7 where applicable and complies with certificate-of-need
8 requirements if the applicant is subject to the provisions of
9 ss. 408.031-408.045.

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

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

19 (8) Each license issued shall indicate the name of the
20 licensee, the provider or service that the licensee is
21 required or authorized to operate or offer, the date the
22 license is issued, the expiration date of the license, the
23 maximum capacity of the licensed premises if applicable, and
24 any other information required by authorizing statutes or
25 deemed necessary by the agency.

26 (9)(a) An initial inspection is not required for
27 companion services or homemaker services providers, as
28 provided under part IV of chapter 400 or for health care
29 services pools, as provided under part XII of chapter 400.

30 (b) If an inspection is required by the authorizing
31 statute for a license application other than an initial

1 application, the inspection must be unannounced. This
2 paragraph does not apply to inspections required pursuant to
3 ss. 483.061(2), 395.0161(4), and 383.324(3).

4 (c) If a provider is not available when an inspection
5 is attempted, the application shall be withdrawn from further
6 consideration.

7 (10) The agency may establish procedures for the
8 electronic submission of required information, including, but
9 not limited to:

10 (a) Licensure applications and required signatures.

11 (b) Payment of fees.

12 (c) Notarization of applications.

13
14 Requirements for electronic submission of any documents
15 required by this part or authorizing statutes may be
16 established by rule.

17 408.807 Change of ownership.--Whenever a change of
18 ownership occurs:

19 (1) The transferor shall notify the agency in writing
20 at least 60 days before the anticipated date of transfer of
21 ownership.

22 (2) The transferee shall make application to the
23 agency for a license within the timeframes required in s.
24 408.806.

25 (3) The transferor shall be responsible and liable
26 for:

27 (a) The lawful operation of the provider and the
28 welfare of the clients served until the date the transferee is
29 licensed by the agency.

30
31

1 (b) Any and all penalties imposed against the
2 transferor for violations occurring before the date of change
3 of ownership.

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

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

10 (a) All client records.

11 (b) Inspection reports.

12 (c) All records required to be maintained pursuant to
13 409.913, if applicable.

14 408.808 License categories.--

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

21 (2) PROVISIONAL LICENSE.--A provisional license may be
22 issued:

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

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

27 (3) INACTIVE LICENSE.--An inactive license may be
28 issued to a health care provider subject to the
29 certificate-of-need provisions in ss. 408.031-408.045 when the
30 provider is currently licensed, does not have a provisional
31 license, and will be temporarily unable to provide services

1 but is reasonably expected to resume services within 12
2 months. Such designation may be made for a period not to
3 exceed 12 months but may be renewed by the agency for up to 6
4 additional months upon demonstration by the licensee of the
5 provider's progress toward reopening. Any request by a
6 licensee for an inactive license or to extend the previously
7 approved inactive period must be submitted to the agency,
8 accompanied by written justification for the inactive license
9 with the beginning and ending dates of inactivity, including a
10 plan for the transfer of any clients to other providers, and
11 the appropriate licensure fees. The agency may not accept a
12 request that is submitted after initiating closure, after any
13 suspension of service, or after notifying clients of closure
14 or suspension of service. Upon agency approval, the provider
15 shall notify clients of any necessary discharge or transfer as
16 required by authorizing statutes. The beginning of the
17 inactive license shall be the date the provider ceases
18 operations. The end of the inactive period shall become the
19 license expiration date and all licensure fees must be
20 current, paid in full, and may be prorated. Reactivation of an
21 inactive license requires the approval of a renewal
22 application, including payment of licensure fees and agency
23 inspections indicating compliance with all requirements of
24 this part, authorizing statutes, and applicable rules.

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

27 408.809 Background screening; prohibited offenses.--

28 (1) Level 2 background screening pursuant to chapter
29 435 must be conducted through the agency on each of the
30 following persons, who shall be considered an employee for the
31 purposes of conducting screening under chapter 435:

- 1 (a) The licensee if an individual;
2 (b) The administrator or a similarly titled person who
3 is responsible for the day-to-day operation of the provider;
4 (c) The financial officer or similarly titled
5 individual who is responsible for the financial operation of
6 the licensee or provider; and
7 (d) Any person who is a controlling interest if the
8 agency has reason to believe that such person has been
9 convicted of any offense prohibited by s. 435.04. For each
10 controlling interest who has been convicted of any such
11 offense, the licensee shall submit to the agency a description
12 and explanation of the conviction at the time of license
13 application.
- 14 (2) Proof of compliance with level 2 screening
15 standards submitted within the previous 5 years to meet any
16 provider or professional licensure requirements of the agency,
17 the Department of Health, or the Department of Children and
18 Family Services satisfies the requirements of this section,
19 provided that such proof is accompanied, under penalty of
20 perjury, by an affidavit of compliance with the provisions of
21 chapter 435. Proof of compliance with the background screening
22 requirements of the Office of Insurance Regulation for an
23 applicant for a certificate of authority to operate a
24 continuing care retirement community under chapter 651,
25 submitted within the previous 5 years, satisfies the
26 Department of Law Enforcement and Federal Bureau of
27 Investigation portions of a level 2 background check.
- 28 (3) A provisional license may be granted to an
29 applicant when each individual required by this section to
30 undergo background screening has met the standards for the
31 Department of Law Enforcement background check, but the agency

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

17 (4) When a change in the administrator of a provider
18 occurs, the licensee must notify the agency of the change
19 within the time period specified in the authorizing statute or
20 rules unless otherwise reported to the administrator's
21 professional licensing board, or Department of Health if there
22 is no board, and must provide evidence of compliance with
23 background screening requirements of this section; except that
24 an administrator who has met the standards for the Department
25 of Law Enforcement background check, but for whom background
26 screening results from the Federal Bureau of Investigation
27 have not yet been received, may be employed pending a receipt
28 of the Federal Bureau of Investigation background screening
29 report. An individual may not continue to serve as
30 administrator if the Federal Bureau of Investigation
31

1 background screening report indicates any violation of
2 background screening standards.

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

5 408.810 Minimum licensure requirements.--In addition
6 to the licensure requirements specified in this part, chapter
7 112, chapter 383, chapter 390, chapter 394, chapter 395,
8 chapter 400, chapter 440, or chapter 483, each applicant for
9 licensure by the Agency for Health Care Administration must
10 comply with the requirements of this section in order to
11 obtain and maintain a license.

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

14 (2) An applicant for licensure must provide a
15 description and explanation of any exclusions, suspensions, or
16 terminations of the applicant from the Medicare, Medicaid, or
17 federal Clinical Laboratory Improvement Amendments (CLIA)
18 programs.

19 (3) Unless otherwise specified in this part,
20 authorizing statutes, or applicable rules, any information
21 required to be reported to the agency must be submitted within
22 10 calendar days after the report period or effective date of
23 the information.

24 (4) Whenever a licensee discontinues operation of a
25 provider:

26 (a) The licensee must inform the agency not less than
27 30 days prior to the discontinuance of operation and inform
28 clients of discharge as required by authorizing statutes.
29 Immediately upon discontinuance of operation of a provider,
30 the licensee shall surrender the license to the agency and the
31 license shall be canceled.

1 (b) Upon closure of a provider, the licensee shall
2 remain responsible for retaining and appropriately
3 distributing all records within the timeframes prescribed in
4 authorizing statutes and applicable rules. In addition, the
5 licensee or, in the event of death or dissolution of a
6 licensee, the estate or agent of the licensee shall:

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

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

20
21 Failure to comply with this paragraph is a misdemeanor of the
22 second degree, punishable as provided in s. 775.083.

23 (5)(a) On or before the first day services are
24 provided to a client, a licensee must inform the client and
25 his or her immediate family or representative, if appropriate,
26 of the right to report:

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

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

7
8 The agency shall publish a minimum of a 90-day advance notice
9 of a change in the toll-free telephone numbers.

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

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

18 (7) An applicant shall provide proof of liability
19 insurance as defined in chapter 624, unless defined otherwise
20 in authorizing statute.

21 (8) Upon application for initial licensure or
22 change-of-ownership licensure, the applicant shall furnish
23 satisfactory proof of the applicant's financial ability to
24 operate in accordance with the requirements of this part,
25 authorizing statutes, and applicable rules. The agency shall
26 establish standards for this purpose, including information
27 concerning the applicant's controlling interests. The agency
28 also shall establish documentation requirements, to be
29 completed by each applicant, that show anticipated provider
30 revenues and expenditures, the basis for financing the
31 anticipated cash-flow requirements of the provider, and an

1 applicant's access to contingency financing. A current
2 certificate of authority, pursuant to chapter 651, may be
3 provided as proof of financial ability to operate. The agency
4 may require a licensee to provide proof of financial ability
5 to operate at any time if there is evidence of financial
6 instability, including, but not limited to, unpaid expenses
7 necessary for the basic operations of the provider.

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

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

28 408.811 Right of inspection; copies; inspection
29 reports.--

30 (1) An authorized officer or employee of the agency
31 may make or cause to be made any inspections and

1 investigations as the agency deems necessary to determine the
2 state of compliance with this part, authorizing statutes, and
3 applicable rules. The right of inspection extends to any
4 business that the agency has reason to believe is being
5 operated as a provider without a license, but inspection of
6 any business suspected of being operated without the
7 appropriate license may not be made without the permission of
8 the owner or person in charge unless a warrant is first
9 obtained from a circuit court. Any application for a license
10 issued under this part, authorizing statutes, or applicable
11 rules constitutes permission for an appropriate inspection to
12 verify the information submitted on or in connection with the
13 application.

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

16 (b) Inspections for relicensure shall be conducted
17 biennially unless otherwise specified by authorizing statutes
18 or applicable rules.

19 (2) Inspections conducted in conjunction with
20 certification may be accepted in lieu of a complete licensure
21 inspection. However, a licensure inspection may also be
22 conducted to review any licensure requirements that are not
23 also requirements of certification.

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

27 (4)(a) Each licensee shall maintain as public
28 information, available upon request, records of all inspection
29 reports pertaining to that provider which have been filed
30 with, or issued by, any governmental agency unless those
31 reports are exempt from, or contain information that is exempt

1 from, s. 119.07(1), or is otherwise made confidential by law.
2 Effective July 1, 2004, copies of such reports shall be
3 retained in the records of the provider for at least 5 years
4 following the date the reports are filed and issued,
5 regardless of a change of ownership.

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

14 408.812 Unlicensed activity.--

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

22 (2) The operation or maintenance of an unlicensed
23 provider or the performance of any services that necessitate
24 licensure without such licensure is a violation of this part
25 and authorizing statutes. Unlicensed activity constitutes harm
26 that materially affects the health, safety, and welfare of
27 clients. The agency, or any state attorney, may, in addition
28 to other remedies provided in this part, bring an action for
29 an injunction to restrain such violation, or to enjoin the
30 future operation or maintenance of any such provider or the
31 provision of services that necessitate licensure in violation

1 of this part and authorizing statutes, until compliance with
2 this part, authorizing statutes, and agency rules has been
3 demonstrated to the satisfaction of the agency.

4 (3) Any person who owns, operates, or maintains an
5 unlicensed provider and who, after receiving notification from
6 the agency, fails to cease operation and apply for a license
7 under this part and authorizing statutes commits a felony of
8 the third degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084. Each day of continued operation is a
10 separate offense.

11 (4) Any person found guilty of violating subsection
12 (3) a second or subsequent time commits a felony of the second
13 degree, punishable as provided under s. 775.082, s. 775.083,
14 or s. 775.084. Each day of continued operation is a separate
15 offense.

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

19 (6) When a licensee has an interest in more than one
20 provider and fails to license any provider rendering services
21 that necessitate licensure, the agency may revoke all
22 licenses, impose actions under s. 408.814, or impose a fine of
23 \$1,000 unless otherwise specified by authorizing statutes
24 against the licensee until such time as the licensee becomes
25 appropriately licensed.

26 (7) In addition to injunctive relief pursuant to
27 subsection (2), if the agency determines that an owner is
28 operating or maintaining a provider without obtaining a
29 license and determines that a condition exists that poses a
30 threat to the health, safety, or welfare of a client of the
31 provider, the owner is subject to the same actions and fines

1 imposed against a licensed provider as specified in this part,
2 the authorizing statute, and agency rules.

3 (8) Any person aware of the operation of an unlicensed
4 provider must report that provider and operation to the
5 agency.

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

19 408.814 Moratoriums; emergency suspensions.--

20 (1) The agency may impose an immediate moratorium or
21 emergency suspension as defined in s. 120.60 on any provider
22 if the agency determines that any condition related to the
23 provider presents a threat to the health, safety, or welfare
24 of the clients.

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

29 (3) A moratorium or emergency suspension remains in
30 effect after a change of ownership, unless the agency has
31 determined that the conditions that created the moratorium,

1 emergency suspension, or denial of licensure have been
2 corrected.

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

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

10 408.815 License denial; revocation.--

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

15 (a) False representation of a material fact in the
16 license application or omission of any material fact from the
17 application.

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

20 (c) A violation of this part, authorizing statutes, or
21 applicable rules.

22 (d) A demonstrated pattern of deficient performance.

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

29 (2) If a licensee lawfully continues to operate while
30 a denial or revocation is pending in litigation, the licensee
31 must continue to meet all other requirements of this part,

1 authorizing statutes, and applicable rules, and must file
2 subsequent renewal applications for licensure, including
3 licensure fees. Notwithstanding chapter 120, the agency may
4 withhold a final decision on any application or request filed
5 during this period until final agency action in pending
6 litigation.

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

10 408.816 Injunctions.--

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

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

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

29 (c) Terminate the operation of a provider when a
30 violation of any provision of this part, authorizing statutes,
31

1 or any standard or rule adopted pursuant thereto exist that
2 materially affect the health, safety, or welfare of clients.

3 (2) Such injunctive relief may be temporary or
4 permanent.

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

13 408.817 Administrative proceedings.--Administrative
14 proceedings challenging agency licensure enforcement action
15 shall be reviewed on the basis of the facts and conditions
16 that resulted in the agency action.

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

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

31

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

4 112.0455 Drug-Free Workplace Act.--

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

6 (a) The requirements of ss. 408.801-408.819 apply to
7 the provision of services that necessitate licensure pursuant
8 to this section and part II of chapter 408 and to entities
9 licensed by or applying for such licensure from the Agency for
10 Health Care Administration pursuant to this section.

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

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

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

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

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

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

1 ~~disqualification exemption has not been requested of and~~
2 ~~granted by the agency as set forth in chapter 435.~~

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

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

28 ~~g. A license may not be granted to any applicant if~~
29 ~~the applicant or managing employee has been found guilty of,~~
30 ~~regardless of adjudication, or has entered a plea of nolo~~
31 ~~contendere or guilty to, any offense prohibited under the~~

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

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

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

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

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

16 2. The laboratory has written procedures to ensure
17 chain of custody.

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

20 a. The use of internal quality controls including the
21 use of samples of known concentrations which are used to check
22 the performance and calibration of testing equipment, and
23 periodic use of blind samples for overall accuracy.

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

27 c. Security measures implemented by the testing
28 laboratory to preclude adulteration of specimens and drug test
29 results.

30 d. Other necessary and proper actions taken to ensure
31 reliable and accurate drug test results.

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

5 1. The name and address of the laboratory which
6 performed the test and the positive identification of the
7 person tested.

8 2. Positive results on confirmation tests only, or
9 negative results, as applicable.

10 3. A list of the drugs for which the drug analyses
11 were conducted.

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

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

17
18 No report shall disclose the presence or absence of any drug
19 other than a specific drug and its metabolites listed pursuant
20 to this section.

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

31

1 ~~(e)(d)~~ Laboratories shall provide technical assistance
2 to the employer, employee, or job applicant for the purpose of
3 interpreting any positive confirmed test results which could
4 have been caused by prescription or nonprescription medication
5 taken by the employee or job applicant.

6 (13) RULES.--

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

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

15 2. Urine, hair, blood, and other body specimens and
16 minimum specimen amounts which are appropriate for drug
17 testing, not inconsistent with other provisions established by
18 law.

19 3. Methods of analysis and procedures to ensure
20 reliable drug-testing results, including standards for initial
21 tests and confirmation tests, not inconsistent with other
22 provisions established by law.

23 4. Minimum cutoff detection levels for drugs or their
24 metabolites for the purposes of determining a positive test
25 result, not inconsistent with other provisions established by
26 law.

27 5. Chain-of-custody procedures to ensure proper
28 identification, labeling, and handling of specimens being
29 tested, not inconsistent with other provisions established by
30 law.

31

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

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

6 (17) LICENSE FEE.--Fees from licensure of drug-testing
7 laboratories shall be sufficient to carry out the
8 responsibilities of the Agency for Health Care Administration
9 for the regulation of drug-testing laboratories. In accordance
10 with s. 408.805, an applicant or licensee shall pay a fee for
11 each license application submitted under this part and part II
12 of chapter 408. The fee may not be less than \$16,000 or more
13 than \$20,000 per biennium and shall be established by rule.
14 ~~The Agency for Health Care Administration shall collect fees~~
15 ~~for all licenses issued under this part. Each nonrefundable~~
16 ~~fee shall be due at the time of application and shall be~~
17 ~~payable to the Agency for Health Care Administration to be~~
18 ~~deposited in a trust fund administered by the Agency for~~
19 ~~Health Care Administration and used only for the purposes of~~
20 ~~this section. The fee schedule is as follows: For licensure~~
21 ~~as a drug testing laboratory, an annual fee of not less than~~
22 ~~\$8,000 or more than \$10,000 per fiscal year; for late filing~~
23 ~~of an application for renewal, an additional fee of \$500 per~~
24 ~~day shall be charged.~~

25 Section 7. Section 383.301, Florida Statutes, is
26 amended to read:

27 383.301 Licensure and regulation of birth centers;
28 legislative intent.--It is the intent of the Legislature to
29 provide for the protection of public health and safety in the
30 establishment, maintenance, and operation of birth centers by
31 providing for licensure of birth centers and for the

1 development, establishment, and enforcement of minimum
2 standards with respect to birth centers. The requirements of
3 part II of chapter 408 apply to the provision of services that
4 necessitate licensure pursuant to ss. 383.30-383.335 and part
5 II of chapter 408 and to entities licensed by or applying for
6 such licensure from the Agency for Health Care Administration
7 pursuant to ss. 383.30-383.335.

8 Section 8. Section 383.304, Florida Statutes, is
9 repealed.

10 Section 9. Section 383.305, Florida Statutes, is
11 amended to read:

12 383.305 Licensure; ~~issuance, renewal, denial,~~
13 ~~suspension, revocation; fees; background screening.--~~

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

18 ~~(1)(a) Upon receipt of an application for a license~~
19 ~~and the license fee, the agency shall issue a license if the~~
20 ~~applicant and facility have received all approvals required by~~
21 ~~law and meet the requirements established under ss.~~
22 ~~383.30-383.335 and by rules promulgated hereunder.~~

23 ~~(b) A provisional license may be issued to any birth~~
24 ~~center that is in substantial compliance with ss.~~
25 ~~383.30-383.335 and with the rules of the agency. A~~
26 ~~provisional license may be granted for a period of no more~~
27 ~~than 1 year from the effective date of rules adopted by the~~
28 ~~agency, shall expire automatically at the end of its term, and~~
29 ~~may not be renewed.~~

30 ~~(c) A license, unless sooner suspended or revoked,~~
31 ~~automatically expires 1 year from its date of issuance and is~~

1 ~~renewable upon application for renewal and payment of the fee~~
2 ~~prescribed, provided the applicant and the birth center meet~~
3 ~~the requirements established under ss. 383.30 383.335 and by~~
4 ~~rules promulgated hereunder. A complete application for~~
5 ~~renewal of a license shall be made 90 days prior to expiration~~
6 ~~of the license on forms provided by the agency.~~

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

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

18 ~~(b) The fees established pursuant to ss.~~
19 ~~383.30 383.335 shall be based on actual costs incurred by the~~
20 ~~agency in the administration of its duties under such~~
21 ~~sections.~~

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

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

29 ~~(6) Whenever the agency finds that there has been a~~
30 ~~substantial failure to comply with the requirements~~
31 ~~established under ss. 383.30 383.335 or in rules adopted under~~

1 ~~those sections, it is authorized to deny, suspend, or revoke a~~
2 ~~license.~~

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

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

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

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

27 ~~(d) A provisional license may be granted to an~~
28 ~~applicant when each individual required by this section to~~
29 ~~undergo background screening has met the standards for the~~
30 ~~Department of Law Enforcement background check, but the agency~~
31 ~~has not yet received background screening results from the~~

1 ~~Federal Bureau of Investigation, or a request for a~~
2 ~~disqualification exemption has been submitted to the agency as~~
3 ~~set forth in chapter 435 but a response has not yet been~~
4 ~~issued. A standard license may be granted to the applicant~~
5 ~~upon the agency's receipt of a report of the results of the~~
6 ~~Federal Bureau of Investigation background screening for each~~
7 ~~individual required by this section to undergo background~~
8 ~~screening which confirms that all standards have been met, or~~
9 ~~upon the granting of a disqualification exemption by the~~
10 ~~agency as set forth in chapter 435. Any other person who is~~
11 ~~required to undergo level 2 background screening may serve in~~
12 ~~his or her capacity pending the agency's receipt of the report~~
13 ~~from the Federal Bureau of Investigation. However, the person~~
14 ~~may not continue to serve if the report indicates any~~
15 ~~violation of background screening standards and a~~
16 ~~disqualification exemption has not been requested of and~~
17 ~~granted by the agency as set forth 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 control~~
23 ~~interests under the Medicaid or Medicare programs shall 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 by a~~
28 ~~member of the board of directors of the applicant, its~~
29 ~~officers, or any individual owning 5 percent or more of the~~
30 ~~applicant. This requirement does not apply to a director of a~~
31 ~~not for profit corporation or organization if the director~~

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 or organization's board of directors, and has no~~
6 ~~financial interest and has no family members with a financial~~
7 ~~interest in the corporation or organization, provided that the~~
8 ~~director and the not for profit corporation or organization~~
9 ~~include in the application a statement affirming that the~~
10 ~~director's relationship to the corporation satisfies the~~
11 ~~requirements of this paragraph.~~

12 ~~(g) A license may not be granted to an applicant if~~
13 ~~the applicant or managing employee has been found guilty of,~~
14 ~~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) The agency may deny or revoke licensure if the~~
20 ~~applicant:~~

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

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

28 ~~(i) An application for license renewal must contain~~
29 ~~the information required under paragraphs (c) and (f).~~

30 Section 10. Section 383.309, Florida Statutes, is
31 amended to read:

1 383.309 Minimum standards for birth centers; rules and
2 enforcement.--

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

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

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

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

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

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

1 Florida Building Code and the Florida Fire Prevention Code
2 which govern birth centers. In addition, the agency may
3 enforce the special-occupancy provisions of the Florida
4 Building Code and the Florida Fire Prevention Code which apply
5 to birth centers in conducting any inspection authorized under
6 this chapter.

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

9 383.315 Agreements with consultants for advice or
10 services; maintenance.--

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

15 Section 12. Section 383.324, Florida Statutes, is
16 amended to read:

17 383.324 ~~Inspections and investigations;~~ Inspection
18 fees.--

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

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

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

28 Section 13. Section 383.325, Florida Statutes, is
29 repealed.

30 Section 14. Section 383.33, Florida Statutes, is
31 amended to read:

1 383.33 Administrative fines ~~penalties; emergency~~
2 ~~orders; moratorium on admissions.--~~

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

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

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

20 ~~(b)2-~~ Actions taken by the licensee to correct the
21 violations or to remedy complaints.

22 ~~(c)3-~~ Any previous violations by the licensee.

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

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

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

6 Section 15. Sections 383.331 and 383.332, Florida
7 Statutes, are repealed.

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

10 383.335 Partial exemptions.--

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

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

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

24 390.011 Definitions.--As used in this chapter, the
25 term:

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

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

30 390.012 Powers of agency; rules; disposal of fetal
31 remains.--

1 (1) The agency ~~may shall have the authority to~~ develop
2 and enforce rules under ss. 390.001-390.021 and part II of
3 chapter 408 for the health, care, and treatment of persons in
4 abortion clinics and for the safe operation of such clinics.
5 These rules shall be comparable to rules which apply to all
6 surgical procedures requiring approximately the same degree of
7 skill and care as the performance of first trimester
8 abortions. The rules shall be reasonably related to the
9 preservation of maternal health of the clients. The rules
10 shall not impose a legally significant burden on a woman's
11 freedom to decide whether to terminate her pregnancy. The
12 rules shall provide for:

13 (a) The performance of pregnancy termination
14 procedures only by a licensed physician.

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

18 Section 19. Section 390.013, Florida Statutes, is
19 repealed.

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

22 390.014 Licenses; fees, ~~display, etc.--~~

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

1 (2) A separate license shall be required for each
2 clinic maintained on separate premises, even though it is
3 operated by the same management as another clinic; but a
4 separate license shall not be required for separate buildings
5 on the same premises.

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

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

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

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

24 Section 21. Sections 390.015, 390.016, and 390.017,
25 Florida Statutes, are repealed.

26 Section 22. Section 390.018, Florida Statutes, is
27 amended to read:

28 390.018 Administrative fine penalty in lieu of
29 revocation or suspension.--In addition to the requirements of
30 part II of chapter 408 If the agency finds that one or more
31 grounds exist for the revocation or suspension of a license

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

13 Section 23. Sections 390.019 and 390.021, Florida
14 Statutes, are repealed.

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

17 394.455 Definitions.--As used in this part, unless the
18 context clearly requires otherwise, the term:

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

21 Section 25. Section 394.67, Florida Statutes, is
22 amended to read:

23 394.67 Definitions.--As used in this part, the term:

24 (1) "Agency" means the Agency for Health Care
25 Administration.

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

31

1 ~~(2)(3)~~ "Client" means any individual receiving
2 services in any substance abuse or mental health facility,
3 program, or service, which facility, program, or service is
4 operated, funded, or regulated by the agency and the
5 department or regulated by the agency.

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

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

23 ~~(5)(6)~~ "Department" means the Department of Children
24 and Family Services.

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

1 ~~(7)~~(8) "District administrator" means the person
2 appointed by the Secretary of Children and Family Services for
3 the purpose of administering a department service district as
4 set forth in s. 20.19.

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

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

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

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

24 ~~(12)~~(13) "Licensed facility" means a facility licensed
25 in accordance with this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) Nursing homes licensed under chapter 400.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14 Any facility licensed under this subsection is not required to
15 provide any services to any persons except those included in
16 the specified conditions of licensure, and is exempt from any
17 requirements related to the 60-day or greater average length
18 of stay imposed on community-based residential treatment
19 facilities otherwise licensed under this chapter.

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

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

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

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

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

1 ~~disqualification exemption has not been requested of and~~
2 ~~granted by the agency as set forth in chapter 435.~~

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

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

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

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

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

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

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

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

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

19 394.877 Fees.--

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

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

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

1 394.878 Issuance and renewal of licenses.--

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

6 ~~(2) A license is valid for a period of 1 year. An~~
7 ~~applicant for renewal of a license shall apply to the agency~~
8 ~~no later than 90 days before expiration of the current~~
9 ~~license.~~

10 ~~(3) A license may not be transferred from one entity~~
11 ~~to another and is valid only for the premises for which it was~~
12 ~~originally issued. For the purposes of this subsection,~~
13 ~~"transfer" includes, but is not limited to, transfer of a~~
14 ~~majority of the ownership interests in a licensee or transfer~~
15 ~~of responsibilities under the license to another entity by~~
16 ~~contractual arrangement.~~

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

20 (1)(5) The agency may issue a probationary license to
21 an applicant that has completed the application requirements
22 of this chapter but has not, at the time of the application,
23 developed an operational crisis stabilization unit or
24 residential treatment facility. The probationary license
25 shall expire 90 days after issuance and may once be renewed
26 for an additional 90-day period. The agency may cancel a
27 probationary license at any time.

28 (2)(6) The agency may issue an interim license to an
29 applicant that has substantially completed all application
30 requirements and has initiated action to fully meet such
31 requirements. The interim license shall expire 90 days after

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

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

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

9 394.879 Rules; enforcement.--

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

3 (a) A license;

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

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

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

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

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

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

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

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

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

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

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

12 395.0161 Licensure inspection.--

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

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

18 ~~(b) Validation inspections.~~

19 ~~(c) Lifesafety inspections.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 395.0197 Internal risk management program.--

31

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

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

14 395.0199 Private utilization review.--

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

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

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

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

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

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

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

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

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

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

31

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

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

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

1 ~~disqualification exemption has not been requested of and~~
2 ~~granted by the agency as set forth in chapter 435.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 395.1046 Complaint investigation procedures.--

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

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

23 395.1055 Rules and enforcement.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 3. Any previous violations of the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) General risk management administration.

31 (d) Patient care.

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

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

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

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

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

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

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

10 Section 47. Paragraph (1) of subsection (3) of section
11 395.1041, Florida Statutes, is amended to read:

12 395.1041 Access to emergency services and care.--

13 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
14 FACILITY OR HEALTH CARE PERSONNEL.--

15 (1) Hospital personnel must ~~may~~ withhold or withdraw
16 cardiopulmonary resuscitation if presented with an order not
17 to resuscitate executed pursuant to s. 401.45. Facility staff
18 and facilities shall not be subject to criminal prosecution or
19 civil liability, nor be considered to have engaged in
20 negligent or unprofessional conduct, for withholding or
21 withdrawing cardiopulmonary resuscitation pursuant to such an
22 order. The absence of an order not to resuscitate executed
23 pursuant to s. 401.45 does not preclude a physician from
24 withholding or withdrawing cardiopulmonary resuscitation as
25 otherwise permitted by law.

26 Section 48. Section 395.10411, Florida Statutes, is
27 created to read:

28 395.10411 Duty of a facility to carry out the advance
29 directive of a patient.--

30 (1) When a person who has a terminal condition or an
31 end-stage condition or is in a persistent vegetative state and

1 who has an advance directive is a patient in a facility
2 licensed under this chapter which is providing health care
3 services to the person, the facility must carry out the
4 advance directive or must transfer the patient pursuant to s.
5 765.1105 to a facility that will carry out the advance
6 directive. The cost of transferring a patient for the purpose
7 of carrying out an advance directive shall be paid by the
8 facility from which the patient is transferred, and neither
9 the patient nor the receiving facility is responsible for any
10 part of such cost. A facility that fails to carry out a
11 patient's advance directive will not receive payment of any
12 state funds for life-prolonging treatment provided to the
13 patient.

14 (2) When a person who has a terminal condition or an
15 end-stage condition or is in a persistent vegetative state and
16 who has an order not to resuscitate is a patient in a facility
17 licensed under this chapter which is providing health care
18 services to the person, the facility must carry out the order
19 not to resuscitate. A facility that fails to carry out a
20 patient's order not to resuscitate will not receive payment of
21 any state funds for life-prolonging treatment provided to the
22 patient.

23 (3) When a person who has a terminal condition or an
24 end-stage condition or is in a persistent vegetative state and
25 who has an advance directive is a designated organ donor, a
26 health care facility may keep the organs of the person viable
27 for a period not to exceed 36 hours once the decision has been
28 made to remove life support. This subsection does not
29 supersede an advance directive, and life-prolonging procedures
30 may not be used beyond a period of 36 hours.
31

1 Section 49. Section 765.1105, Florida Statutes, is
2 amended to read:

3 765.1105 Transfer of a patient.--

4 (1) A health care provider or facility that refuses to
5 comply with a patient's advance directive, or the treatment
6 decision of his or her surrogate, must ~~shall make reasonable~~
7 ~~efforts to~~ transfer the patient to another health care
8 provider or facility that will comply with the directive or
9 treatment decision. This chapter does not require a health
10 care provider or facility to commit any act which is contrary
11 to the provider's or facility's moral or ethical beliefs, if
12 the patient:

13 (a) Is not in an emergency condition; and

14 (b) Has received written information upon admission
15 informing the patient of the policies of the health care
16 provider or facility regarding such moral or ethical beliefs.

17 (2) A health care provider or facility that is
18 unwilling to carry out the wishes of the patient or the
19 treatment decision of his or her surrogate because of moral or
20 ethical beliefs must, within 48 hours after a determination by
21 the attending physician that the patient's condition is such
22 that the advance directive applies, 7 days either:

23 (a) Transfer the patient to another health care
24 provider or facility. The health care provider or facility
25 shall pay the costs for transporting the patient to another
26 health care provider or facility; or

27 (b) If the patient has not been transferred, carry out
28 the wishes of the patient or the patient's surrogate, unless
29 the provisions of s. 765.105 apply.

30 Section 50. Section 765.1021, Florida Statutes, is
31 created to read:

1 765.1021 Advance directive as part of a patient's
2 medical record.--To encourage individuals to complete an
3 advance directive and to inform individuals about options for
4 care available to them at the end of life, the Legislature
5 encourages primary physicians and patients to discuss advance
6 directives and end-of-life care in a physician's office
7 setting on a nonemergency basis. If a patient completes an
8 advance directive and gives a copy of it to a physician, the
9 patient's advance directive must become part of the patient's
10 medical record.

11 Section 51. Subsection (1) of section 765.304, Florida
12 Statutes, is amended to read:

13 765.304 Procedure for living will.--

14 (1) If a person has made a living will expressing his
15 or her desires concerning life-prolonging procedures, but has
16 not designated a surrogate to execute his or her wishes
17 concerning life-prolonging procedures or designated a
18 surrogate under part II, the attending physician must ~~may~~
19 proceed as directed by the principal in the living will or
20 must transfer him or her to a physician who will comply with
21 the living will. In the event of a dispute or disagreement
22 concerning the attending physician's decision to withhold or
23 withdraw life-prolonging procedures, the attending physician
24 shall not withhold or withdraw life-prolonging procedures
25 pending review under s. 765.105. If a review of a disputed
26 decision is not sought within 7 days following the attending
27 physician's decision to withhold or withdraw life-prolonging
28 procedures, the attending physician must ~~may~~ proceed in
29 accordance with the principal's instructions.

30 Section 52. Subsection (2) of section 395.10975,
31 Florida Statutes, is amended to read:

1 395.10975 Grounds for denial,~~suspension~~, or
2 revocation of a health care risk manager's license;
3 administrative fine.--

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

8 (a) Imposition of an administrative fine not to exceed
9 \$2,500 for each count or separate offense.

10 (b) Issuance of a reprimand.

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

16 Section 53. Subsection (17) of section 400.021,
17 Florida Statutes, is amended to read:

18 400.021 Definitions.--When used in this part, unless
19 the context otherwise requires, the term:

20 (17) "Resident care plan" means a written plan
21 developed, maintained, and reviewed not less than quarterly by
22 a registered nurse, with participation from other facility
23 staff and the resident or his or her designee or legal
24 representative, which includes a comprehensive assessment of
25 the needs of an individual resident; the type and frequency of
26 services required to provide the necessary care for the
27 resident to attain or maintain the highest practicable
28 physical, mental, and psychosocial well-being; a listing of
29 services provided within or outside the facility to meet those
30 needs; and an explanation of service goals. The resident care
31 plan must be signed by the director of nursing or another

1 registered nurse employed by the facility to whom
2 institutional responsibilities have been delegated and by the
3 resident, the resident's designee, or the resident's legal
4 representative. The facility may not use an agency or
5 temporary registered nurse to satisfy the foregoing
6 requirement and must document the institutional
7 responsibilities that have been delegated to the registered
8 nurse.

9 Section 54. Subsections (5) and (20) of section
10 400.021, Florida Statutes, are repealed.

11 Section 55. Subsection (3) of section 400.022, Florida
12 Statutes, is amended to read:

13 400.022 Residents' rights.--

14 (3) Any violation of the resident's rights set forth
15 in this section shall constitute grounds for action by the
16 agency under the provisions of s. 400.102, s. 400.121, or part
17 II of chapter 408. In order to determine whether the licensee
18 is adequately protecting residents' rights, the licensure
19 ~~annual~~ inspection of the facility shall include private
20 informal conversations with a sample of residents to discuss
21 residents' experiences within the facility with respect to
22 rights specified in this section and general compliance with
23 standards, and consultation with the ombudsman council in the
24 local planning and service area of the Department of Elderly
25 Affairs in which the nursing home is located.

26 Section 56. Paragraph (b) of subsection (1) of section
27 400.051, Florida Statutes, is amended to read:

28 400.051 Homes or institutions exempt from the
29 provisions of this part.--

30 (1) The following shall be exempt from the provisions
31 of this part:

1 (b) Any hospital, as defined in s. 395.002 ~~s.~~
2 ~~395.002(11)~~, that is licensed under chapter 395.

3 Section 57. Section 400.062, Florida Statutes, is
4 amended to read:

5 400.062 License required; fee; disposition; display;
6 transfer.--

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 ~~It is unlawful to operate or maintain a facility without first~~
13 ~~obtaining from the agency a license authorizing such~~
14 ~~operation.~~

15 (2) Separate licenses shall be required for facilities
16 maintained in separate premises, even though operated under
17 the same management. However, a separate license shall not be
18 required for separate buildings on the same grounds.

19 (3) In accordance with s. 408.805, an applicant or
20 licensee shall pay a fee for each license application
21 submitted under this part and part II of chapter 408. The
22 ~~annual~~ license fee ~~required for each license issued under this~~
23 ~~part~~ shall be comprised of two parts. Part I of the license
24 fee shall be the basic license fee. The rate per bed for the
25 basic license fee shall be established biennially ~~annually~~ and
26 shall be ~~\$100~~\$50 per bed unless modified by rule. ~~The agency~~
27 ~~may adjust the per bed licensure fees by the Consumer Price~~
28 ~~Index based on the 12 months immediately preceding the~~
29 ~~increase to cover the cost of regulation under this part.~~ Part
30 II of the license fee shall be the resident protection fee,
31 which shall be at the rate of not less than 50 ~~25~~ cents per

1 bed. The rate per bed shall be the minimum rate per bed, and
2 such rate shall remain in effect until the effective date of a
3 rate per bed adopted by rule by the agency pursuant to this
4 part. At such time as the amount on deposit in the Resident
5 Protection Trust Fund is less than \$1 million, the agency may
6 adopt rules to establish a rate which may not exceed ~~\$20~~\$10
7 per bed. The rate per bed shall revert back to the minimum
8 rate per bed when the amount on deposit in the Resident
9 Protection Trust Fund reaches \$1 million, except that any rate
10 established by rule shall remain in effect until such time as
11 the rate has been equally required for each license issued
12 under this part. Any amount in the fund in excess of \$2
13 million shall revert to the Health Care Trust Fund and may not
14 be expended without prior approval of the Legislature. The
15 agency may prorate the biennial ~~annual~~ license fee for those
16 licenses which it issues under this part for less than 2 years
17 ~~1 year. Funds generated by license fees collected in~~
18 ~~accordance with this section shall be deposited in the~~
19 ~~following manner:~~

20 (a) ~~The basic license fee collected shall be deposited~~
21 ~~in the Health Care Trust Fund, established for the sole~~
22 ~~purpose of carrying out this part. When the balance of the~~
23 ~~account established in the Health Care Trust Fund for the~~
24 ~~deposit of fees collected as authorized under this section~~
25 ~~exceeds one third of the annual cost of regulation under this~~
26 ~~part, the excess shall be used to reduce the licensure fees in~~
27 ~~the next year.~~

28 (b) The resident protection fee collected shall be
29 deposited in the Resident Protection Trust Fund for the sole
30 purpose of paying, in accordance with the provisions of s.
31 400.063, for the appropriate alternate placement, care, and

1 treatment of a resident removed from a nursing home facility
2 on a temporary, emergency basis or for the maintenance and
3 care of residents in a nursing home facility pending removal
4 and alternate placement.

5 (4) Counties or municipalities applying for licenses
6 under this part are exempt from license fees authorized under
7 this section.

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

10 ~~(6) A license shall be valid only in the hands of the~~
11 ~~individual, firm, partnership, association, or corporation to~~
12 ~~whom it is issued and shall not be subject to sale,~~
13 ~~assignment, or other transfer, voluntary or involuntary, nor~~
14 ~~shall a license be valid for any premises other than those for~~
15 ~~which originally issued.~~

16 Section 58. Subsection (1) of section 400.063, Florida
17 Statutes, is amended to read:

18 400.063 Resident Protection Trust Fund.--

19 (1) A Resident Protection Trust Fund shall be
20 established for the purpose of collecting and disbursing funds
21 generated from the license fees and administrative fines as
22 provided for in ss. 393.0673(2), 400.062(3) ~~400.062(3)(b)~~,
23 ~~400.111(1)~~, 400.121(2), and 400.23(8). Such funds shall be
24 for the sole purpose of paying for the appropriate alternate
25 placement, care, and treatment of residents who are removed
26 from a facility licensed under this part or a facility
27 specified in s. 393.0678(1) in which the agency determines
28 that existing conditions or practices constitute an immediate
29 danger to the health, safety, or security of the residents.
30 If the agency determines that it is in the best interest of
31 the health, safety, or security of the residents to provide

1 for an orderly removal of the residents from the facility, the
2 agency may utilize such funds to maintain and care for the
3 residents in the facility pending removal and alternative
4 placement. The maintenance and care of the residents shall be
5 under the direction and control of a receiver appointed
6 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds
7 may be expended in an emergency upon a filing of a petition
8 for a receiver, upon the declaration of a state of local
9 emergency pursuant to s. 252.38(3)(a)5., or upon a duly
10 authorized local order of evacuation of a facility by
11 emergency personnel to protect the health and safety of the
12 residents.

13 Section 59. Section 400.071, Florida Statutes, is
14 amended to read:

15 400.071 Application for license.--

16 ~~(1) An application for a license as required by s.~~
17 ~~400.062 shall be made to the agency on forms furnished by it~~
18 ~~and shall be accompanied by the appropriate license fee.~~

19 (1)(2) The application shall be under oath and shall
20 contain the following:

21 ~~(a) The name, address, and social security number of~~
22 ~~the applicant if an individual; if the applicant is a firm,~~
23 ~~partnership, or association, its name, address, and employer~~
24 ~~identification number (EIN), and the name and address of any~~
25 ~~controlling interest; and the name by which the facility is to~~
26 ~~be known.~~

27 ~~(b) The name of any person whose name is required on~~
28 ~~the application under the provisions of paragraph (a) and who~~
29 ~~owns at least a 10 percent interest in any professional~~
30 ~~service, firm, association, partnership, or corporation~~
31 ~~providing goods, leases, or services to the facility for which~~

1 ~~the application is made, and the name and address of the~~
2 ~~professional service, firm, association, partnership, or~~
3 ~~corporation in which such interest is held.~~

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

7 ~~(d) The name of the person or persons under whose~~
8 ~~management or supervision the facility will be conducted and~~
9 ~~the name of the administrator.~~

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

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

24 ~~(c)(g)~~ Information relating to ~~the number, experience,~~
25 ~~and training of the employees of the facility and of the moral~~
26 ~~character of the applicant and employees which the agency~~
27 ~~requires by rule, including the name and address of any~~
28 ~~nursing home with which the applicant or employees have been~~
29 ~~affiliated through ownership or employment within 5 years of~~
30 ~~the date of the application for a license and the record of~~
31 ~~any criminal convictions involving the applicant and any~~

1 ~~criminal convictions involving an employee if known by the~~
2 ~~applicant after inquiring of the employee.~~ The applicant must
3 demonstrate that sufficient numbers of qualified staff, by
4 training or experience, will be employed to properly care for
5 the type and number of residents who will reside in the
6 facility.

7 (d)~~(h)~~ Copies of any civil verdict or judgment
8 involving the applicant rendered within the 10 years preceding
9 the application, relating to medical negligence, violation of
10 residents' rights, or wrongful death. As a condition of
11 licensure, the licensee agrees to provide to the agency copies
12 of any new verdict or judgment involving the applicant,
13 relating to such matters, within 30 days after filing with the
14 clerk of the court. The information required in this
15 paragraph shall be maintained in the facility's licensure file
16 and in an agency database which is available as a public
17 record.

18 ~~(3) The applicant shall submit evidence which~~
19 ~~establishes the good moral character of the applicant,~~
20 ~~manager, supervisor, and administrator. No applicant, if the~~
21 ~~applicant is an individual; no member of a board of directors~~
22 ~~or officer of an applicant, if the applicant is a firm,~~
23 ~~partnership, association, or corporation; and no licensed~~
24 ~~nursing home administrator shall have been convicted, or found~~
25 ~~guilty, regardless of adjudication, of a crime in any~~
26 ~~jurisdiction which affects or may potentially affect residents~~
27 ~~in the facility.~~

28 ~~(4) Each applicant for licensure must comply with the~~
29 ~~following requirements:~~

30 ~~(a) 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. As used in this~~
3 ~~subsection, the term "applicant" means the facility~~
4 ~~administrator, or similarly titled individual who is~~
5 ~~responsible for the day to day operation of the licensed~~
6 ~~facility, and the facility financial officer, or similarly~~
7 ~~titled individual who is responsible for the financial~~
8 ~~operation of the licensed facility.~~

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

15 ~~(c) Proof of compliance with the level 2 background~~
16 ~~screening requirements of chapter 435 which has been submitted~~
17 ~~within the previous 5 years in compliance with any other~~
18 ~~health care or assisted living licensure requirements of this~~
19 ~~state is acceptable in fulfillment of paragraph (a). Proof of~~
20 ~~compliance with background screening which has been submitted~~
21 ~~within the previous 5 years to fulfill the requirements of the~~
22 ~~Financial Services Commission and the Office of Insurance~~
23 ~~Regulation pursuant to chapter 651 as part of an application~~
24 ~~for a certificate of authority to operate a continuing care~~
25 ~~retirement community is acceptable in fulfillment of the~~
26 ~~Department of Law Enforcement and Federal Bureau of~~
27 ~~Investigation background check.~~

28 ~~(d) A provisional license may be granted to an~~
29 ~~applicant when each individual required by this section to~~
30 ~~undergo background screening has met the standards for the~~
31 ~~Department of Law Enforcement background check, but the agency~~

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

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

26 ~~(f) Each applicant must submit to the agency a~~
27 ~~description and explanation of any conviction of an offense~~
28 ~~prohibited under the level 2 standards of chapter 435 by a~~
29 ~~member of the board of directors of the applicant, its~~
30 ~~officers, or any individual owning 5 percent or more of the~~
31 ~~applicant. This requirement shall not apply to a director of a~~

1 ~~not for profit corporation or organization if the director~~
2 ~~serves solely in a voluntary capacity for the corporation or~~
3 ~~organization, does not regularly take part in the day to day~~
4 ~~operational decisions of the corporation or organization,~~
5 ~~receives no remuneration for his or her services on the~~
6 ~~corporation or organization's board of directors, and has no~~
7 ~~financial interest and has no family members with a financial~~
8 ~~interest in the corporation or organization, provided that the~~
9 ~~director and the not for profit corporation or organization~~
10 ~~include in the application a statement affirming that the~~
11 ~~director's relationship to the corporation satisfies the~~
12 ~~requirements of this paragraph.~~

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

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

26 ~~(2)(6)~~ If the applicant offers continuing care
27 agreements as defined in chapter 651, proof shall be furnished
28 that such applicant has obtained a certificate of authority as
29 required for operation under that chapter.

30 ~~(3)(7)~~ As a condition of licensure, each licensee,
31 except one offering continuing care agreements as defined in

1 chapter 651, must agree to accept recipients of Title XIX of
2 the Social Security Act on a temporary, emergency basis. The
3 persons whom the agency may require such licensees to accept
4 are those recipients of Title XIX of the Social Security Act
5 who are residing in a facility in which existing conditions
6 constitute an immediate danger to the health, safety, or
7 security of the residents of the facility.

8 ~~(4)(8) The agency may not issue a license to a nursing~~
9 ~~home that fails to receive a certificate of need under the~~
10 ~~provisions of ss. 408.031-408.045.~~ It is the intent of the
11 Legislature that, in reviewing a certificate-of-need
12 application to add beds to an existing nursing home facility,
13 preference be given to the application of a licensee who has
14 been awarded a Gold Seal as provided for in s. 400.235, if the
15 applicant otherwise meets the review criteria specified in s.
16 408.035.

17 ~~(5)(9) The agency may develop an abbreviated survey~~
18 ~~for licensure renewal applicable to a licensee that has~~
19 ~~continuously operated as a nursing facility since 1991 or~~
20 ~~earlier, has operated under the same management for at least~~
21 ~~the preceding 30 months, and has had during the preceding 30~~
22 ~~months no class I or class II deficiencies.~~

23 ~~(10) The agency may issue an inactive license to a~~
24 ~~nursing home that will be temporarily unable to provide~~
25 ~~services but that is reasonably expected to resume services.~~
26 ~~Such designation may be made for a period not to exceed 12~~
27 ~~months but may be renewed by the agency for up to 6 additional~~
28 ~~months. Any request by a licensee that a nursing home become~~
29 ~~inactive must be submitted to the agency and approved by the~~
30 ~~agency prior to initiating any suspension of service or~~
31 ~~notifying residents. Upon agency approval, the nursing home~~

1 ~~shall notify residents of any necessary discharge or transfer~~
2 ~~as provided in s. 400.0255.~~

3 (6)(11) As a condition of licensure, each facility
4 must establish and submit with its application a plan for
5 quality assurance and for conducting risk management.

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

11 Section 60. Section 400.0712, Florida Statutes, is
12 created to read:

13 400.0712 Application for inactive license.--

14 (1) As specified in this section, the agency may issue
15 an inactive license to a nursing home facility for all or a
16 portion of its beds. Any request by a licensee that a nursing
17 home or portion of a nursing home become inactive must be
18 submitted to the agency in the approved format. The facility
19 may not initiate any suspension of services, notify residents,
20 or initiate facility closure before receiving approval from
21 the agency; and a facility that violates this provision may
22 not be issued an inactive license. Upon agency approval of an
23 inactive license, the nursing home shall notify residents of
24 any necessary discharge or transfer as provided in s.
25 400.0255.

26 (2) The agency may issue an inactive license to a
27 nursing home that chooses to use an unoccupied contiguous
28 portion of the facility for an alternative use to meet the
29 needs of elderly persons through the use of less restrictive,
30 less institutional services.

31

1 (a) An inactive license issued under this subsection
2 may be granted for a period not to exceed 12 months but may be
3 renewed annually by the agency for 12 months.

4 (b) A request to extend the inactive license must be
5 submitted to the agency in the approved format and approved by
6 the agency in writing.

7 (c) Nursing homes that receive an inactive license to
8 provide alternative services shall not receive preference for
9 participation in the Assisted Living for the Elderly Medicaid
10 waiver.

11 (3) The agency may issue an inactive license to a
12 nursing home that will be temporarily unable to provide
13 services but is reasonably expected to resume services.

14 (a) An inactive license issued under this subsection
15 may be issued for a period not to exceed 12 months and may be
16 renewed by the agency for an additional 6 months upon
17 demonstration of progress toward reopening.

18 (b) All licensure fees must be current and paid in
19 full, and may be prorated as provided by agency rule, before
20 the inactive license is issued.

21 (c) Reactivation of an inactive license requires that
22 the applicant pay all licensure fees and be inspected by the
23 agency to confirm that all of the requirements of this part
24 and applicable rules are met.

25 (4) The agency shall adopt rules necessary to
26 administer this section.

27 Section 61. Section 400.102, Florida Statutes, is
28 amended to read:

29 400.102 Action by agency against licensee; grounds.--
30
31

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

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

6 ~~(1)(b)~~ Misappropriation or conversion of the property
7 of a resident of the facility;

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

12 ~~(d) Violation of provisions of this part or rules~~
13 ~~adopted under this part;~~

14 ~~(3)(e)~~ Fraudulent altering, defacing, or falsifying
15 any medical or nursing home records, or causing or procuring
16 any of these offenses to be committed. ~~;~~ or

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

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

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

23 ~~(b) In the case of an applicant for relicensure or a~~
24 ~~current licensee, administrative action as provided in s.~~
25 ~~400.121 or injunctive action as authorized by s. 400.125.~~

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

28 Section 62. Section 400.111, Florida Statutes, is
29 amended to read:

30 400.111 Renewal ~~Expiration~~ of license; ~~renewal.~~--
31

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

21 ~~(2) A licensee against whom a revocation or suspension~~
22 ~~proceeding, or any judicial proceeding instituted by the~~
23 ~~agency under this part, is pending at the time of license~~
24 ~~renewal may be issued a temporary license effective until~~
25 ~~final disposition by the agency of such proceeding. If~~
26 ~~judicial relief is sought from the aforesaid administrative~~
27 ~~order, the court having jurisdiction may issue such orders~~
28 ~~regarding the issuance of a temporary permit during the~~
29 ~~pendency of the judicial proceeding.~~

30 ~~(3) The agency may not renew a license if the~~
31 ~~applicant has failed to pay any fines assessed by final order~~

1 ~~of the agency or final order of the Health Care Financing~~
2 ~~Administration under requirements for federal certification.~~
3 ~~The agency may renew the license of an applicant following the~~
4 ~~assessment of a fine by final order if such fine has been paid~~
5 ~~into an escrow account pending an appeal of a final order.~~

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

18 Section 63. Subsections (2) and (5) of section
19 400.1183, Florida Statutes, are amended to read:

20 400.1183 Resident grievance procedures.--

21 (2) Each facility shall maintain records of all
22 grievances and shall report ~~annually~~ to the agency at the time
23 of relicensure the total number of grievances handled, a
24 categorization of the cases underlying the grievances, and the
25 final disposition of the grievances.

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

29 Section 64. Section 400.121, Florida Statutes, is
30 amended to read:

31

1 400.121 Denial ~~or, suspension,~~ revocation of license;
2 ~~moratorium on admissions;~~ administrative fines; procedure;
3 order to increase staffing.--

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

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

10 (b) A violation of any provision of this part, part II
11 of chapter 408, or applicable rule; or A demonstrated pattern
12 of deficient practice;

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

20 ~~(d) Exclusion from the Medicare or Medicaid program;~~
21 ~~or~~

22 (b)(e) An adverse action by a regulatory agency
23 against any other licensed facility that has a common
24 controlling interest with the licensee or applicant against
25 whom the action under this section is being brought. If the
26 adverse action involves solely the management company, the
27 applicant or licensee shall be given 30 days to remedy before
28 final action is taken. If the adverse action is based solely
29 upon actions by a controlling interest, the applicant or
30 licensee may present factors in mitigation of any proposed
31

1 penalty based upon a showing that such penalty is
2 inappropriate under the circumstances.

3
4 All hearings shall be held within the county in which the
5 licensee or applicant operates or applies for a license to
6 operate a facility as defined herein.

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

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

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

21 (b) Is conditionally licensed for 180 or more
22 continuous days;

23 (c) Is cited for two class I deficiencies arising from
24 unrelated circumstances during the same survey or
25 investigation; or

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

28
29 The licensee may present factors in mitigation of revocation,
30 and the agency may make a determination not to revoke a
31

1 license based upon a showing that revocation is inappropriate
2 under the circumstances.

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

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

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

17 ~~(5)(6) An action taken by the agency to deny, ~~suspend,~~~~
18 ~~or revoke a facility's license under this part shall be heard~~
19 ~~by the Division of Administrative Hearings of the Department~~
20 ~~of Management Services within 60 days after the assignment of~~
21 ~~an administrative law judge, unless the time limitation is~~
22 ~~waived by both parties. The administrative law judge must~~
23 ~~render a decision within 30 days after receipt of a proposed~~
24 ~~recommended order.~~

25 ~~(6)(7) The agency is authorized to require a facility~~
26 ~~to increase staffing beyond the minimum required by law, if~~
27 ~~the agency has taken administrative action against the~~
28 ~~facility for care-related deficiencies directly attributable~~
29 ~~to insufficient staff. Under such circumstances, the facility~~
30 ~~may request an expedited interim rate increase. The agency~~
31 ~~shall process the request within 10 days after receipt of all~~

1 required documentation from the facility. A facility that
2 fails to maintain the required increased staffing is subject
3 to a fine of \$500 per day for each day the staffing is below
4 the level required by the agency.

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

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

13 ~~(8)(10)~~ In addition to any other sanction imposed
14 under this part, in any final order that imposes sanctions,
15 the agency may assess costs related to the investigation and
16 prosecution of the case. Payment of agency costs shall be
17 deposited into the Health Care Trust Fund.

18 Section 65. Section 400.125, Florida Statutes, is
19 repealed.

20 Section 66. Subsections (14), (15), (16), and (20) of
21 section 400.141, Florida Statutes, are amended to read:

22 400.141 Administration and management of nursing home
23 facilities.--Every licensed facility shall comply with all
24 applicable standards and rules of the agency and shall:

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

29 ~~(15)(a) At the end of each calendar quarter, submit~~
30 ~~semiannually to the agency, or more frequently if requested by~~
31 ~~the agency,~~ information regarding facility staff-to-resident

1 ratios, staff turnover, and staff stability, including
2 information regarding certified nursing assistants, licensed
3 nurses, the director of nursing, and the facility
4 administrator. For purposes of this reporting:

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

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

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

25 (b)(d) A nursing facility that has failed to comply
26 with state minimum-staffing requirements for 2 consecutive
27 days is prohibited from accepting new admissions until the
28 facility has achieved the minimum-staffing requirements for a
29 period of 6 consecutive days. For the purposes of this
30 paragraph, any person who was a resident of the facility and
31 was absent from the facility for the purpose of receiving

1 | medical care at a separate location or was on a leave of
2 | absence is not considered a new admission. Failure to impose
3 | such an admissions moratorium constitutes a class II
4 | deficiency.

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

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

14 |
15 | Nothing in this section shall limit the agency's ability to
16 | impose a deficiency or take other actions if a facility does
17 | not have enough staff to meet the residents' needs.

18 | (16) Report monthly the number of vacant beds in the
19 | facility which are available for resident occupancy on the
20 | last day of the month ~~information is reported.~~

21 | (20) Maintain general and professional liability
22 | insurance coverage in accordance with part II of chapter 408
23 | which ~~that~~ is in force at all times. In lieu of general and
24 | professional liability insurance coverage, a state-designated
25 | teaching nursing home and its affiliated assisted living
26 | facilities created under s. 430.80 may demonstrate proof of
27 | financial responsibility as provided in s. 430.80(3)(h); the
28 | exception provided in this paragraph shall expire July 1,
29 | 2005.

30 |
31 |

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

6 Section 67. Subsections (4) and (5) of section 400.17,
7 Florida Statutes, are amended to read:

8 400.17 Bribes, kickbacks, certain solicitations
9 prohibited.--

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

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

27 Section 68. Section 400.179, Florida Statutes, is
28 amended to read:

29 400.179 ~~Sale or transfer of ownership of a nursing~~
30 ~~facility~~; Liability for Medicaid underpayments and
31 overpayments.--

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

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

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

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

27 (2)(5) Because any transfer of a nursing facility may
28 expose the fact that Medicaid may have underpaid or overpaid
29 the transferor, and because in most instances, any such
30 underpayment or overpayment can only be determined following a
31

1 formal field audit, the liabilities for any such underpayments
2 or overpayments shall be as follows:

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

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

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

- 25 1. Medicaid rate changes or adjustments;
- 26 2. Any depreciation recapture;
- 27 3. Any recapture of fair rental value system indexing;

28 or

- 29 4. Audits completed by the agency.

30
31

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

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

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

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

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

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

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

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

29 | 4. All existing nursing facility licensees, operating
30 | the facility as a leasehold, shall acquire, maintain, and
31 | provide proof to the agency of the 30-month bond required in

1 subparagraph 1., above, on and after July 1, 1993, for each
2 license renewal.

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

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

23 Section 69. Subsections (1) and (4) of section 400.18,
24 Florida Statutes, are amended to read:

25 400.18 Closing of nursing facility.--

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

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

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

14 Section 70. Subsections (1), (2), and (3) of section
15 400.19, Florida Statutes, are amended to read:

16 400.19 Right of entry and inspection.--

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

1 ~~the permission of the owner or person in charge thereof,~~
2 ~~unless a warrant is first obtained from the circuit court~~
3 ~~authorizing same. Any application for a facility license or~~
4 ~~renewal thereof, made pursuant to this part, shall constitute~~
5 ~~permission for and complete acquiescence in any entry or~~
6 ~~inspection of the premises for which the license is sought, in~~
7 ~~order to facilitate verification of the information submitted~~
8 ~~on or in connection with the application; to discover,~~
9 ~~investigate, and determine the existence of abuse or neglect;~~
10 ~~or to elicit, receive, respond to, and resolve complaints. The~~
11 agency shall, within 60 days after receipt of a complaint made
12 by a resident or resident's representative, complete its
13 investigation and provide to the complainant its findings and
14 resolution.

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

26 (3) The agency shall every 15 months conduct at least
27 one unannounced inspection to determine compliance by the
28 licensee with statutes, and with rules promulgated under the
29 provisions of those statutes, governing minimum standards of
30 construction, quality and adequacy of care, and rights of
31 residents. The survey shall be conducted every 6 months for

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

26 | Section 71. Section 400.191, Florida Statutes, is
27 | amended to read:

28 | 400.191 Availability, distribution, and posting of
29 | reports and records.--

30 | (1) The agency shall provide information to the public
31 | about all of the licensed nursing home facilities operating in

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

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

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

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

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

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

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

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

31

- 1 6. The number of private and semiprivate rooms in each
2 facility.
- 3 7. The religious affiliation, if any, of each
4 facility.
- 5 8. The languages spoken by the administrator and staff
6 of each facility.
- 7 9. Whether or not each facility accepts Medicare or
8 Medicaid recipients or insurance, health maintenance
9 organization, Veterans Administration, CHAMPUS program, or
10 workers' compensation coverage.
- 11 10. Recreational and other programs available at each
12 facility.
- 13 11. Special care units or programs offered at each
14 facility.
- 15 12. Whether the facility is a part of a retirement
16 community that offers other services pursuant to part III,
17 part IV, or part V.
- 18 13. Survey and deficiency information contained on the
19 Online Survey Certification and Reporting (OSCAR) system of
20 the federal Centers for Medicare and Medicaid Services Health
21 ~~Care Financing Administration~~, including recertification
22 ~~annual~~ survey, revisit, and complaint survey information, for
23 each facility for the past 30 45 months. For noncertified
24 nursing homes, state survey and deficiency information,
25 including licensure annual survey, revisit, and complaint
26 survey information for the past 30 45 months shall be
27 provided.
- 28 14. A summary of the Online Survey Certification and
29 Reporting (OSCAR) data for each facility over the past 30 45
30 months. Such summary may include a score, rating, or
31 comparison ranking with respect to other facilities based on

1 the number of citations received by the facility of
2 recertification ~~annual~~, revisit, and complaint surveys; the
3 severity and scope of the citations; and the number of ~~annual~~
4 recertification surveys the facility has had during the past
5 30 ~~45~~ months. The score, rating, or comparison ranking may be
6 presented in either numeric or symbolic form for the intended
7 consumer audience.

8 (b) The agency shall provide the following information
9 in printed form:

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

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

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

17 4. The total number of beds, and of private and
18 semiprivate rooms, in each facility.

19 5. The religious affiliation, if any, of each
20 facility.

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

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

27 8. Whether or not each facility accepts Medicare or
28 Medicaid recipients or insurance, health maintenance
29 organization, Veterans Administration, CHAMPUS program, or
30 workers' compensation coverage.

31

1 9. Recreational programs, special care units, and
2 other programs available at each facility.

3 10. The Internet address for the site where more
4 detailed information can be seen.

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

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

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

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

- 27 1. The licensure status history of each facility.
- 28 2. The rating history of each facility.
- 29 3. The regulatory history of each facility, which may
30 include federal sanctions, state sanctions, federal fines,
31 state fines, and other actions.

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

3 5. Internet links to the Internet sites of the
4 facilities or their affiliates.

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

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

1 numbers of the agency's ~~managed care and~~ health quality
2 assurance field area offices.

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

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

15 (5) Every nursing home facility licensee shall:

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

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

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

29 (b) Upon request, provide to any person who has
30 completed a written application with an intent to be admitted
31 to, or to any resident of, such nursing home, or to any

1 relative, spouse, or guardian of such person, a copy of the
2 last inspection report pertaining to the nursing home and
3 issued by the agency, provided the person requesting the
4 report agrees to pay a reasonable charge to cover copying
5 costs.

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

8 Section 72. Section 400.20, Florida Statutes, is
9 amended to read:

10 400.20 Licensed nursing home administrator
11 required.--~~A~~ ~~No~~ nursing home may not ~~shall~~ operate except
12 under the supervision of a licensed nursing home
13 administrator, and ~~a~~ ~~no~~ person may not ~~shall~~ be a nursing home
14 administrator unless he or she holds ~~is the holder of~~ a
15 current license as provided in chapter 468.

16 Section 73. Subsection (4) of section 400.211, Florida
17 Statutes, is amended to read:

18 400.211 Persons employed as nursing assistants;
19 certification requirement.--

20 (4) When employed by a nursing home facility for a
21 12-month period or longer, a nursing assistant, to maintain
22 certification, shall submit to a performance review every 12
23 months and must receive regular inservice education based on
24 the outcome of such reviews. The inservice training must:

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

29 (b) Include, at a minimum:

30 1. Techniques for assisting with eating and proper
31 feeding;

1 2. Principles of adequate nutrition and hydration;
2 3. Techniques for assisting and responding to the
3 cognitively impaired resident or the resident with difficult
4 behaviors;
5 4. Techniques for caring for the resident at the
6 end-of-life; and
7 5. Recognizing changes that place a resident at risk
8 for pressure ulcers and falls; and
9 (c) Address areas of weakness as determined in nursing
10 assistant performance reviews and may address the special
11 needs of residents as determined by the nursing home facility
12 staff.
13
14 Costs associated with this training may not be reimbursed from
15 additional Medicaid funding through interim rate adjustments.
16 Section 74. Subsections (2), (7), and (8) of section
17 400.23, Florida Statutes, are amended, and subsection (10) is
18 added to that section, to read:
19 400.23 Rules; evaluation and deficiencies; licensure
20 status.--
21 (2) Pursuant to the intention of the Legislature, the
22 agency, in consultation with the Department of Health and the
23 Department of Elderly Affairs, shall adopt and enforce rules
24 to implement this part ~~and part II of chapter 408~~, which shall
25 include reasonable and fair criteria in relation to:
26 (a) The location of the facility and housing
27 conditions that will ensure the health, safety, and comfort of
28 residents, including an adequate call system. In making such
29 rules, the agency shall be guided by criteria recommended by
30 nationally recognized reputable professional groups and
31 associations with knowledge of such subject matters. The

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

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

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

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

22 (e) A uniform accounting system.

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

29 (g) The preparation and annual update of a
30 comprehensive emergency management plan. The agency shall
31 adopt rules establishing minimum criteria for the plan after

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

20 | (h) The availability, distribution, and posting of
21 | reports and records pursuant to s. 400.191 and the Gold Seal
22 | Program pursuant to s. 400.235.

23 | (7) The agency shall, at least every 15 months,
24 | evaluate all nursing home facilities and make a determination
25 | as to the degree of compliance by each licensee with the
26 | established rules adopted under this part as a basis for
27 | assigning a licensure status to that facility. The agency
28 | shall base its evaluation on the most recent inspection
29 | report, taking into consideration findings from other official
30 | reports, surveys, interviews, investigations, and inspections.

31 |

1 The agency shall assign a licensure status of standard or
2 conditional to each nursing home.

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

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

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

25 (d) The current licensure status of each facility must
26 be indicated in bold print on the face of the license. A list
27 of the deficiencies of the facility shall be posted in a
28 prominent place that is in clear and unobstructed public view
29 at or near the place where residents are being admitted to
30 that facility. Licensees receiving a conditional licensure
31 status for a facility shall prepare, within 10 working days

1 after receiving notice of deficiencies, a plan for correction
2 of all deficiencies and shall submit the plan to the agency
3 for approval.

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

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

9 1. Establish uniform procedures for the evaluation of
10 facilities.

11 2. Provide criteria in the areas referenced in
12 paragraph (c).

13 3. Address other areas necessary for carrying out the
14 intent of this section.

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

1 deficiency in which the problems causing the deficiency are
2 pervasive in the facility or represent systemic failure that
3 has affected or has the potential to affect a large portion of
4 the facility's residents. The agency shall indicate the
5 classification on the face of the notice of deficiencies as
6 follows:

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

25 (b) A class II deficiency is a deficiency that the
26 agency determines has compromised the resident's ability to
27 maintain or reach his or her highest practicable physical,
28 mental, and psychosocial well-being, as defined by an accurate
29 and comprehensive resident assessment, plan of care, and
30 provision of services. A class II deficiency is subject to a
31 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for

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

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

28 (d) A class IV deficiency is a deficiency that the
29 agency determines has the potential for causing no more than a
30 minor negative impact on the resident. If the class IV
31 deficiency is isolated, no plan of correction is required.

1 (10) Agency records, reports, ranking systems,
2 Internet information, and publications must be promptly
3 updated to reflect the most current agency actions.

4 Section 75. Subsections (1) and (2) of section
5 400.241, Florida Statutes, are repealed.

6 Section 76. Subsection (5) of section 400.402, Florida
7 Statutes, is repealed and present subsections (12), (14), and
8 (17) of that section are redesignated as subsections (11),
9 (13), and (16), respectively, and amended to read:

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

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

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

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

1 complex enough to require 24-hour nursing supervision and may
2 include such services as the application and care of routine
3 dressings, and care of casts, braces, and splints.

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

11 Section 77. Section 400.407, Florida Statutes, is
12 amended to read:

13 400.407 License required; fee, display.--

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

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

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

1 | one or more of the following categories of care: standard,
2 | extended congregate care, limited nursing services, or limited
3 | mental health.

4 | (a) A standard license shall be issued to facilities
5 | providing one or more of the personal services identified in
6 | s. 400.402. Such facilities may also employ or contract with a
7 | person licensed under part I of chapter 464 to administer
8 | medications and perform other tasks as specified in s.
9 | 400.4255.

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

17 | 1. In order for extended congregate care services to
18 | be provided in a facility licensed under this part, the agency
19 | must first determine that all requirements established in law
20 | and rule are met and must specifically designate, on the
21 | facility's license, that such services may be provided and
22 | whether the designation applies to all or part of a facility.
23 | Such designation may be made at the time of initial licensure
24 | or 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 extended congregate care services must
30 | have maintained a standard license and may not have been
31 | subject to administrative sanctions during the previous 2

1 | years, or since initial licensure if the facility has been
2 | licensed for less than 2 years, for any of the following
3 | reasons:

4 | a. A class I or class II violation;

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

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

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

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

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

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

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

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

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

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

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

30 d. Adopt and follow policies and procedures that
31 maximize resident independence, dignity, choice, and

1 decisionmaking to permit residents to age in place to the
2 extent possible, so that moves due to changes in functional
3 status are minimized or avoided.

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

9 f. Implement the concept of managed risk.

10 g. Provide, either directly or through contract, the
11 services of a person licensed pursuant to part I of chapter
12 464.

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

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

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

1 criteria for a facility with a standard license, if the
2 individual is determined appropriate for admission to the
3 extended congregate care facility.

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

9 7. When a facility can no longer provide or arrange
10 for services in accordance with the resident's service plan
11 and needs and the facility's policy, the facility shall make
12 arrangements for relocating the person in accordance with s.
13 400.428(1)(k).

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

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

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

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

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

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 78. 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 79. 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 80. 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 81. 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.~~

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 82. 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) 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) Knowingly operating any unlicensed facility or
22 providing without a license any service that must be licensed
23 under this chapter.

24 (j)(n) 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 83. 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 84. Section 400.415, Florida Statutes, is
28 repealed.

29 Section 85. 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 86. 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 87. Subsection (7) of section 400.4178,
28 Florida Statutes, is repealed.

29 Section 88. 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 89. 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 90. 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 91. Section 400.421, Florida Statutes, is
15 repealed.

16 Section 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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 100. Subsection (1) of section 400.435,
19 Florida Statutes, is repealed.

20 Section 101. 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 3. Resident elopement requirements.--Each facility
22 shall conduct a minimum of two resident elopement prevention
23 and response drills per year. All administrators and direct
24 care staff shall participate in the drills, which must include
25 a review of procedures to address resident elopement. Each
26 facility shall document the implementation of the drills and
27 ensure that the drills are conducted in a manner consistent
28 with the facility's resident elopement policies and
29 procedures.

30 (b) The preparation and annual update of a
31 comprehensive emergency management plan. Such standards must

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

22 | (c) The number, training, and qualifications of all
23 | personnel having responsibility for the care of residents.
24 | The rules must require adequate staff to provide for the
25 | safety of all residents. Facilities licensed for 17 or more
26 | residents are required to maintain an alert staff for 24 hours
27 | per day.

28 | (d) All sanitary conditions within the facility and
29 | its surroundings which will ensure the health and comfort of
30 | residents. The rules must clearly delineate the
31 | responsibilities of the agency's licensure and survey staff,

1 the county health departments, and the local authority having
2 jurisdiction over fire safety and ensure that inspections are
3 not duplicative. The agency may collect fees for food service
4 inspections conducted by the county health departments and
5 transfer such fees to the Department of Health.

6 (e) ~~License application and license renewal, transfer~~
7 ~~of ownership,~~ Proper management of resident funds and personal
8 property, surety bonds, resident contracts, refund policies,
9 ~~financial ability to operate,~~ and facility and staff records.

10 (f) Inspections, complaint investigations,
11 ~~moratoriums,~~ classification of deficiencies, levying and
12 enforcement of penalties, and use of income from fees and
13 fines.

14 (g) The enforcement of the resident bill of rights
15 specified in s. 400.428.

16 (h) The care and maintenance of residents, which must
17 include, but is not limited to:

- 18 1. The supervision of residents;
- 19 2. The provision of personal services;
- 20 3. The provision of, or arrangement for, social and
21 leisure activities;
- 22 4. The arrangement for appointments and transportation
23 to appropriate medical, dental, nursing, or mental health
24 services, as needed by residents;
- 25 5. The management of medication;
- 26 6. The nutritional needs of residents;
- 27 7. Resident records; and
- 28 8. Internal risk management and quality assurance.

29 (i) Facilities holding a limited nursing, extended
30 congregate care, or limited mental health license.

31

1 (j) The establishment of specific criteria to define
2 appropriateness of resident admission and continued residency
3 in a facility holding a standard, limited nursing, extended
4 congregate care, and limited mental health license.

5 (k) The use of physical or chemical restraints. The
6 use of physical restraints is limited to half-bed rails as
7 prescribed and documented by the resident's physician with the
8 consent of the resident or, if applicable, the resident's
9 representative or designee or the resident's surrogate,
10 guardian, or attorney in fact. The use of chemical restraints
11 is limited to prescribed dosages of medications authorized by
12 the resident's physician and must be consistent with the
13 resident's diagnosis. Residents who are receiving medications
14 that can serve as chemical restraints must be evaluated by
15 their physician at least annually to assess:

16 1. The continued need for the medication.

17 2. The level of the medication in the resident's
18 blood.

19 3. The need for adjustments in the prescription.

20 (2) In adopting any rules pursuant to this part, the
21 agency ~~department~~, in conjunction with the department ~~agency~~,
22 shall make distinct standards for facilities based upon
23 facility size; the types of care provided; the physical and
24 mental capabilities and needs of residents; the type,
25 frequency, and amount of services and care offered; and the
26 staffing characteristics of the facility. Rules developed
27 pursuant to this section shall not restrict the use of shared
28 staffing and shared programming in facilities that are part of
29 retirement communities that provide multiple levels of care
30 and otherwise meet the requirements of law and rule. Except
31 for uniform firesafety standards, the agency ~~department~~ shall

1 adopt by rule separate and distinct standards for facilities
2 with 16 or fewer beds and for facilities with 17 or more beds.
3 The standards for facilities with 16 or fewer beds shall be
4 appropriate for a noninstitutional residential environment,
5 provided that the structure is no more than two stories in
6 height and all persons who cannot exit the facility unassisted
7 in an emergency reside on the first floor. The agency
8 ~~department~~, in conjunction with the department ~~agency~~, may
9 make other distinctions among types of facilities as necessary
10 to enforce the provisions of this part. Where appropriate, the
11 agency shall offer alternate solutions for complying with
12 established standards, based on distinctions made by the
13 department and the agency relative to the physical
14 characteristics of facilities and the types of care offered
15 therein.

16 (3) ~~The department shall submit a copy of proposed~~
17 ~~rules to the Speaker of the House of Representatives, the~~
18 ~~President of the Senate, and appropriate committees of~~
19 ~~substance for review and comment prior to the promulgation~~
20 ~~thereof.~~

21 (a) Rules adopted ~~promulgated~~ by the agency ~~department~~
22 shall encourage the development of homelike facilities which
23 promote the dignity, individuality, personal strengths, and
24 decisionmaking ability of residents.

25 (b) The agency, in consultation with the department,
26 may waive rules promulgated pursuant to this part in order to
27 demonstrate and evaluate innovative or cost-effective
28 congregate care alternatives which enable individuals to age
29 in place. Such waivers may be granted only in instances where
30 there is reasonable assurance that the health, safety, or
31 welfare of residents will not be endangered. To apply for a

1 waiver, the licensee shall submit to the agency a written
2 description of the concept to be demonstrated, including
3 goals, objectives, and anticipated benefits; the number and
4 types of residents who will be affected, if applicable; a
5 brief description of how the demonstration will be evaluated;
6 and any other information deemed appropriate by the agency.
7 Any facility granted a waiver shall submit a report of
8 findings to the agency and the department within 12 months.
9 At such time, the agency may renew or revoke the waiver or
10 pursue any regulatory or statutory changes necessary to allow
11 other facilities to adopt the same practices. The agency
12 ~~department~~ may by rule clarify terms and establish waiver
13 application procedures, criteria for reviewing waiver
14 proposals, and procedures for reporting findings, as necessary
15 to implement this subsection.

16 (4) The agency may use an abbreviated biennial
17 standard licensure inspection that consists of a review of key
18 quality-of-care standards in lieu of a full inspection in
19 facilities which have a good record of past performance.
20 However, a full inspection shall be conducted in facilities
21 which have had a history of class I or class II violations,
22 uncorrected class III violations, confirmed ombudsman council
23 complaints, or confirmed licensure complaints, within the
24 previous licensure period immediately preceding the inspection
25 or when a potentially serious problem is identified during the
26 abbreviated inspection. The agency, in consultation with the
27 department, shall develop the key quality-of-care standards
28 with input from the State Long-Term Care Ombudsman Council and
29 representatives of provider groups for incorporation into its
30 rules. The agency ~~department~~, in consultation with the
31 department ~~agency~~, shall report annually to the Legislature

1 concerning its implementation of this subsection. The report
2 shall include, at a minimum, the key quality-of-care standards
3 which have been developed; the number of facilities identified
4 as being eligible for the abbreviated inspection; the number
5 of facilities which have received the abbreviated inspection
6 and, of those, the number that were converted to full
7 inspection; the number and type of subsequent complaints
8 received by the agency or department on facilities which have
9 had abbreviated inspections; any recommendations for
10 modification to this subsection; any plans by the agency to
11 modify its implementation of this subsection; and any other
12 information which the agency ~~department~~ believes should be
13 reported.

14 ~~(5) A fee shall be charged by the department to any~~
15 ~~person requesting a copy of this part or rules promulgated~~
16 ~~under this part. Such fees shall not exceed the actual cost~~
17 ~~of duplication and postage.~~

18 Section 102. Subsection (4) of section 400.442,
19 Florida Statutes, is amended to read:

20 400.442 Pharmacy and dietary services.--

21 (4) The agency ~~department~~ may by rule establish
22 procedures and specify documentation as necessary to implement
23 this section.

24 Section 103. Subsection (3) of section 400.444,
25 Florida Statutes, is amended to read:

26 400.444 Construction and renovation; requirements.--

27 (3) The agency ~~department~~ may adopt rules to establish
28 procedures and specify the documentation necessary to
29 implement this section.

30 Section 104. Subsections (1), (2), and (3) of section
31 400.447 and section 400.451, Florida Statutes, are repealed.

1 Section 105. Subsections (1), (3), and (6) of section
2 400.452, Florida Statutes, as amended by section 3 of chapter
3 2003-405, Laws of Florida, are amended to read:

4 400.452 Staff training and educational programs; core
5 educational requirement.--

6 (1) Administrators and other assisted living facility
7 staff must meet minimum training and education requirements
8 established by the Department of Elderly Affairs or the agency
9 by rule. This training and education is intended to assist
10 facilities to appropriately respond to the needs of residents,
11 to maintain resident care and facility standards, and to meet
12 licensure requirements.

13 (3) Effective January 1, 2004, a new facility
14 administrator must complete the required training and
15 education, including the competency test, within a reasonable
16 time after being employed as an administrator, as determined
17 by the department. Failure to do so is a violation of this
18 part and subjects the violator to an administrative fine as
19 prescribed in s. 400.419. Administrators licensed in
20 accordance with chapter 468, part II, are exempt from this
21 requirement. Other licensed professionals may be exempted, as
22 determined ~~by the department~~ by rule.

23 (6) Other facility staff shall participate in training
24 relevant to their job duties as specified by rule ~~of the~~
25 ~~department~~.

26 Section 106. Section 400.454, Florida Statutes, is
27 amended to read:

28 400.454 Collection of information; local subsidy.--

29 (1) To enable the agency ~~department~~ to collect the
30 information requested by the Legislature regarding the actual
31 cost of providing room, board, and personal care in

1 facilities, the agency may ~~department is authorized to~~ conduct
2 field visits and audits of facilities as may be necessary.
3 The owners of randomly sampled facilities shall submit such
4 reports, audits, and accountings of cost as required ~~the~~
5 ~~department may require~~ by rule; provided that such reports,
6 audits, and accountings shall be the minimum necessary to
7 implement the provisions of this section. Any facility
8 selected to participate in the study shall cooperate with the
9 agency ~~department~~ by providing cost of operation information
10 to interviewers.

11 (2) Local governments or organizations may contribute
12 to the cost of care of local facility residents by further
13 subsidizing the rate of state-authorized payment to such
14 facilities. Implementation of local subsidy shall require
15 agency ~~departmental~~ approval and shall not result in
16 reductions in the state supplement.

17 Section 107. Subsections (1) and (4) of section
18 400.464, Florida Statutes, are amended to read:

19 400.464 Home health agencies to be licensed;
20 expiration of license; exemptions; unlawful acts; penalties.--

21 (1) The requirements of part II of chapter 408 apply
22 to the provision of services that necessitate licensure
23 pursuant to this part and part II of chapter 408 and to
24 entities licensed or registered by or applying for such
25 licensure or registration from the Agency for Health Care
26 Administration pursuant to this part. However, an applicant
27 for licensure is exempt from the provisions of s. 408.810(10).
28 ~~Any home health agency must be licensed by the agency to~~
29 ~~operate in this state. A license issued to a home health~~
30 ~~agency, unless sooner suspended or revoked, expires 1 year~~
31 ~~after its date of issuance.~~

1 (4)(a) ~~An organization may not provide, offer, or~~
2 ~~advertise home health services to the public unless the~~
3 ~~organization has a valid license or is specifically exempted~~
4 ~~under this part.~~ An organization that offers or advertises to
5 the public any service for which licensure or registration is
6 required under this part must include in the advertisement the
7 license number or regulation number issued to the organization
8 by the agency. The agency shall assess a fine of not less
9 than \$100 to any licensee or registrant who fails to include
10 the license or registration number when submitting the
11 advertisement for publication, broadcast, or printing. The
12 holder of a license issued under this part may not advertise
13 or indicate to the public that it holds a home health agency
14 or nurse registry license other than the one it has been
15 issued.

16 (b) A person who violates paragraph (a) is subject to
17 an injunctive proceeding under s. 408.816 ~~s. 400.515~~. A
18 violation of paragraph (a) or s. 408.812 is a deceptive and
19 unfair trade practice and constitutes a violation of the
20 Florida Deceptive and Unfair Trade Practices Act.

21 ~~(c) A person who violates the provisions of paragraph~~
22 ~~(a) commits a misdemeanor of the second degree, punishable as~~
23 ~~provided in s. 775.082 or s. 775.083. Any person who commits~~
24 ~~a second or subsequent violation commits a misdemeanor of the~~
25 ~~first degree, punishable as provided in s. 775.082 or s.~~
26 ~~775.083. Each day of continuing violation constitutes a~~
27 ~~separate offense.~~

28 Section 108. Section 400.471, Florida Statutes, is
29 amended to read:

30 400.471 Application for license; fee; provisional
31 license; temporary permit.--

1 (1) Each applicant for licensure must comply with all
2 provisions of part II of chapter 408. ~~Application for an~~
3 ~~initial license or for renewal of an existing license must be~~
4 ~~made under oath to the agency on forms furnished by it and~~
5 ~~must be accompanied by the appropriate license fee as provided~~
6 ~~in subsection (8).~~ ~~The agency must take final action on an~~
7 ~~initial licensure application within 60 days after receipt of~~
8 ~~all required documentation.~~

9 (2) In addition to the requirements of part II of
10 chapter 408, the applicant must file with the application
11 satisfactory proof that the home health agency is in
12 compliance with this part and applicable rules, including:

13 (a) A listing of services to be provided, either
14 directly by the applicant or through contractual arrangements
15 with existing providers; and

16 (b) The number and discipline of professional staff to
17 be employed; ~~an annually thereafter~~

18 ~~(c) Proof of financial ability to operate.~~

19 ~~(3) An applicant for initial licensure must~~
20 ~~demonstrate financial ability to operate by submitting a~~
21 ~~balance sheet and income and expense statement for the first 2~~
22 ~~years of operation which provide evidence of having sufficient~~
23 ~~assets, credit, and projected revenues to cover liabilities~~
24 ~~and expenses. The applicant shall have demonstrated financial~~
25 ~~ability to operate if the applicant's assets, credit, and~~
26 ~~projected revenues meet or exceed projected liabilities and~~
27 ~~expenses. All documents required under this subsection must~~
28 ~~be prepared in accordance with generally accepted accounting~~
29 ~~principles, and the financial statement must be signed by a~~
30 ~~certified public accountant.~~

31

1 ~~(4) Each applicant for licensure must comply with the~~
2 ~~following requirements:~~

3 ~~(a) Upon receipt of a completed, signed, and dated~~
4 ~~application, the agency shall require background screening of~~
5 ~~the applicant, in accordance with the level 2 standards for~~
6 ~~screening set forth in chapter 435. As used in this~~
7 ~~subsection, the term "applicant" means the administrator, or a~~
8 ~~similarly titled person who is responsible for the day to day~~
9 ~~operation of the licensed home health agency, and the~~
10 ~~financial officer, or similarly titled individual who is~~
11 ~~responsible for the financial operation of the licensed home~~
12 ~~health agency.~~

13 ~~(b) The agency may require background screening for a~~
14 ~~member of the board of directors of the licensee or an officer~~
15 ~~or an individual owning 5 percent or more of the licensee if~~
16 ~~the agency reasonably suspects that such individual has been~~
17 ~~convicted of an offense prohibited under the level 2 standards~~
18 ~~for screening set forth in chapter 435.~~

19 ~~(c) Proof of compliance with the level 2 background~~
20 ~~screening requirements of chapter 435 which has been submitted~~
21 ~~within the previous 5 years in compliance with any other~~
22 ~~health care or assisted living licensure requirements of this~~
23 ~~state is acceptable in fulfillment of paragraph (a). Proof of~~
24 ~~compliance with background screening which has been submitted~~
25 ~~within the previous 5 years to fulfill the requirements of the~~
26 ~~Financial Services Commission and the Office of Insurance~~
27 ~~Regulation pursuant to chapter 651 as part of an application~~
28 ~~for a certificate of authority to operate a continuing care~~
29 ~~retirement community is acceptable in fulfillment of the~~
30 ~~Department of Law Enforcement and Federal Bureau of~~
31 ~~Investigation background check.~~

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

21 ~~(e) Each applicant must submit to the agency, with its~~
22 ~~application, a description and explanation of any exclusions,~~
23 ~~permanent suspensions, or terminations of the licensee or~~
24 ~~potential licensee from the Medicare or Medicaid programs.~~
25 ~~Proof of compliance with the requirements for disclosure of~~
26 ~~ownership and control interest under the Medicaid or Medicare~~
27 ~~programs may be accepted in lieu of this submission.~~

28 ~~(f) Each applicant must submit to the agency a~~
29 ~~description and explanation of any conviction of an offense~~
30 ~~prohibited under the level 2 standards of chapter 435 by a~~
31 ~~member of the board of directors of the applicant, its~~

1 ~~officers, or any individual owning 5 percent or more of the~~
2 ~~applicant. This requirement does not apply to a director of a~~
3 ~~not for profit corporation or organization if the director~~
4 ~~serves solely in a voluntary capacity for the corporation or~~
5 ~~organization, does not regularly take part in the day to day~~
6 ~~operational decisions of the corporation or organization,~~
7 ~~receives no remuneration for his or her services on the~~
8 ~~corporation or organization's board of directors, and has no~~
9 ~~financial interest and has no family members with a financial~~
10 ~~interest in the corporation or organization, provided that the~~
11 ~~director and the not for profit corporation or organization~~
12 ~~include in the application a statement affirming that the~~
13 ~~director's relationship to the corporation satisfies the~~
14 ~~requirements of this paragraph.~~

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

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

24 ~~1. Has falsely represented a material fact in the~~
25 ~~application required by paragraph (c) or paragraph (f), or has~~
26 ~~omitted any material fact from the application required by~~
27 ~~paragraph (c) or paragraph (f); or~~

28 ~~2. Has been or is currently excluded, suspended,~~
29 ~~terminated from, or has involuntarily withdrawn from~~
30 ~~participation in this state's Medicaid program, or the~~
31 ~~Medicaid program of any other state, or from participation in~~

1 ~~the Medicare program or any other governmental or private~~
2 ~~health care or health insurance program.~~

3 ~~(i) An application for license renewal must contain~~
4 ~~the information required under paragraphs (c) and (f).~~

5 ~~(3)(5)~~ In addition to the requirements of s. 408.810,
6 the home health agency must also obtain and maintain the
7 following insurance coverages in an amount of not less than
8 \$250,000 per claim, and the home health agency must submit
9 proof of coverage with an initial application for licensure
10 and with each ~~annual~~ application for license renewal:

11 (a) Malpractice insurance as defined in s.
12 624.605(1)(k); and

13 (b) Liability insurance as defined in s.
14 624.605(1)(b).

15 ~~(6) Ninety days before the expiration date, an~~
16 ~~application for renewal must be submitted to the agency under~~
17 ~~oath on forms furnished by it, and a license must be renewed~~
18 ~~if the applicant has met the requirements established under~~
19 ~~this part and applicable rules. The home health agency must~~
20 ~~file with the application satisfactory proof that it is in~~
21 ~~compliance with this part and applicable rules. If there is~~
22 ~~evidence of financial instability, the home health agency must~~
23 ~~submit satisfactory proof of its financial ability to comply~~
24 ~~with the requirements of this part.~~

25 ~~(7) When transferring the ownership of a home health~~
26 ~~agency, the transferee must submit an application for a~~
27 ~~license at least 60 days before the effective date of the~~
28 ~~transfer. If the home health agency is being leased, a copy~~
29 ~~of the lease agreement must be filed with the application.~~

30 ~~(4)(8)~~ In accordance with s. 408.805, an applicant or
31 licensee shall pay a fee for each license application

1 submitted under this part and part II of chapter 408. The fee
2 shall be established by rule and shall be set at ~~The license~~
3 ~~fee and annual renewal fee required of a home health agency~~
4 ~~are nonrefundable. The agency shall set the fees in an amount~~
5 that is sufficient to cover the agency's ~~its~~ costs in carrying
6 out its responsibilities under this part, but may not ~~to~~
7 exceed \$2,000 per biennium ~~\$1,000~~. However, state, county, or
8 municipal governments applying for licenses under this part
9 are exempt from the payment of license fees. ~~All fees~~
10 ~~collected under this part must be deposited in the Health Care~~
11 ~~Trust Fund for the administration of this part.~~

12 ~~(9) The license must be displayed in a conspicuous~~
13 ~~place in the administrative office of the home health agency~~
14 ~~and is valid only while in the possession of the person to~~
15 ~~which it is issued. The license may not be sold, assigned, or~~
16 ~~otherwise transferred, voluntarily or involuntarily, and is~~
17 ~~valid only for the home health agency and location for which~~
18 ~~originally issued.~~

19 ~~(10) A home health agency against whom a revocation or~~
20 ~~suspension proceeding is pending at the time of license~~
21 ~~renewal may be issued a provisional license effective until~~
22 ~~final disposition by the agency of such proceedings. If~~
23 ~~judicial relief is sought from the final disposition, the~~
24 ~~court that has jurisdiction may issue a temporary permit for~~
25 ~~the duration of the judicial proceeding.~~

26 ~~(5)(11)~~ The agency may not issue a license designated
27 as certified to a home health agency that fails to satisfy the
28 requirements of a Medicare certification survey from the
29 agency.

30
31

1 ~~(12) The agency may not issue a license to a home~~
2 ~~health agency that has any unpaid fines assessed under this~~
3 ~~part.~~

4 Section 109. Section 400.474, Florida Statutes, is
5 amended to read:

6 400.474 Denial or, ~~suspension~~, revocation of license;
7 injunction; grounds; penalties.--

8 (1) The agency may deny or, ~~revoke, or suspend~~ a
9 license, ~~or~~ impose an administrative fine in the manner
10 provided in chapter 120, or initiate injunctive proceedings
11 under s. 408.816 for the violation of any provision of this
12 part, part II of chapter 408, or applicable rules s. 400.515.

13 (2) Any of the following actions by a home health
14 agency or its employee is grounds for disciplinary action by
15 the agency:

16 (a) Violation of this part, part II of chapter 408, or
17 of applicable rules.

18 (b) An intentional, reckless, or negligent act that
19 materially affects the health or safety of a patient.

20 (c) Knowingly providing home health services in an
21 unlicensed assisted living facility or unlicensed adult
22 family-care home, unless the home health agency or employee
23 reports the unlicensed facility or home to the agency within
24 72 hours after providing the services.

25 ~~(3) The agency may impose the following penalties for~~
26 ~~operating without a license upon an applicant or owner who has~~
27 ~~in the past operated, or who currently operates, a licensed~~
28 ~~home health agency.~~

29 ~~(a) If a home health agency that is found to be~~
30 ~~operating without a license wishes to apply for a license, the~~
31 ~~home health agency may submit an application only after the~~

1 ~~agency has verified that the home health agency no longer~~
2 ~~operates an unlicensed home health agency.~~

3 ~~(b) Any person, partnership, or corporation that~~
4 ~~violates paragraph (a) and that previously operated a licensed~~
5 ~~home health agency or concurrently operates both a licensed~~
6 ~~home health agency and an unlicensed home health agency~~
7 ~~commits a felony of the third degree punishable as provided in~~
8 ~~s. 775.082, s. 775.083, or s. 775.084. If an owner has an~~
9 ~~interest in more than one home health agency and fails to~~
10 ~~license any one of those home health agencies, the agency must~~
11 ~~issue a cease and desist order for the activities of the~~
12 ~~unlicensed home health agency and impose a moratorium on any~~
13 ~~or all of the licensed related home health agencies until the~~
14 ~~unlicensed home health agency is licensed.~~

15 ~~(3)(c)~~ If any home health agency is found to be
16 operating without a license meets the criteria in paragraph
17 ~~(a) or paragraph (b)~~ and that home health agency has received
18 any government reimbursement for services ~~provided by an~~
19 ~~unlicensed home health agency~~, the agency shall make a fraud
20 referral to the appropriate government reimbursement program.

21 ~~(4) The agency may deny, revoke, or suspend the~~
22 ~~license of a home health agency, or may impose on a home~~
23 ~~health agency administrative fines not to exceed the aggregate~~
24 ~~sum of \$5,000 if:~~

25 ~~(a) The agency is unable to obtain entry to the home~~
26 ~~health agency to conduct a licensure survey, complaint~~
27 ~~investigation, surveillance visit, or monitoring visit.~~

28 ~~(b) An applicant or a licensed home health agency has~~
29 ~~falsely represented a material fact in the application, or has~~
30 ~~omitted from the application any material fact, including, but~~
31 ~~not limited to, the fact that the controlling or ownership~~

1 ~~interest is held by any officer, director, agent, manager,~~
2 ~~employee, affiliated person, partner, or shareholder who is~~
3 ~~not eligible to participate.~~

4 ~~(c) An applicant, owner, or person who has a 5 percent~~
5 ~~or greater interest in a licensed entity:~~

6 ~~1. Has been previously found by any licensing,~~
7 ~~certifying, or professional standards board or agency to have~~
8 ~~violated the standards or conditions that relate to home~~
9 ~~health related licensure or certification, or to the quality~~
10 ~~of home health related services provided; or~~

11 ~~2. Has been or is currently excluded, suspended,~~
12 ~~terminated from, or has involuntarily withdrawn from,~~
13 ~~participation in the Medicaid program of this state or any~~
14 ~~other state, the Medicare program, or any other governmental~~
15 ~~health care or health insurance program.~~

16 Section 110. Subsection (1) and paragraphs (a) and (b)
17 of subsection (2) of section 400.484, Florida Statutes, are
18 amended to read:

19 400.484 Right of inspection; deficiencies; fines.--

20 (1) In accordance with s. 408.811, ~~Any duly authorized~~
21 ~~officer or employee of the agency may make such inspections~~
22 ~~and investigations as are necessary in order to determine the~~
23 ~~state of compliance with this part and with applicable rules.~~
24 ~~The right of inspection extends to any business that the~~
25 ~~agency has reason to believe is being operated as a home~~
26 ~~health agency without a license, but such inspection of any~~
27 ~~such business may not be made without the permission of the~~
28 ~~owner or person in charge unless a warrant is first obtained~~
29 ~~from a circuit court. Any application for a license issued~~
30 ~~under this part or for license renewal constitutes permission~~

31

1 ~~for an appropriate inspection to verify the information~~
2 ~~submitted on or in connection with the application.~~

3 (2) The agency shall impose fines for various classes
4 of deficiencies in accordance with the following schedule:

5 (a) A class I deficiency is any act, omission, or
6 practice that results in a patient's death, disablement, or
7 permanent injury, or places a patient at imminent risk of
8 death, disablement, or permanent injury. Upon finding a class
9 I deficiency, the agency may impose an administrative fine in
10 the amount of \$5,000 for each occurrence and each day that the
11 deficiency exists. In addition, the agency may immediately
12 revoke the license, or impose a moratorium pursuant to s.
13 408.814 ~~on the admission of new patients~~, until the factors
14 causing the deficiency have been corrected.

15 (b) A class II deficiency is any act, omission, or
16 practice that has a direct adverse effect on the health,
17 safety, or security of a patient. Upon finding a class II
18 deficiency, the agency may impose an administrative fine in
19 the amount of \$1,000 for each occurrence and each day that the
20 deficiency exists. In addition, the agency may suspend the
21 license, or impose a moratorium pursuant to s. 408.814 ~~on the~~
22 ~~admission of new patients~~, until the deficiency has been
23 corrected.

24 Section 111. Section 400.494, Florida Statutes, is
25 amended to read:

26 400.494 Information about patients confidential.--

27 (1) Information about patients received by persons
28 employed by, or providing services to, a home health agency or
29 received by the licensing agency through reports or inspection
30 shall be confidential and exempt from the provisions of s.
31 119.07(1) and may shall not be disclosed to any person other

1 than the patient without the written consent of that patient
2 or the patient's guardian.

3 (2) This section does not apply to information
4 lawfully requested by the Medicaid Fraud Control Unit of the
5 Office of the Attorney General or requested under s. 408.811
6 ~~Department of Legal Affairs.~~

7 Section 112. Section 400.495, Florida Statutes, is
8 amended to read:

9 400.495 Notice of toll-free telephone number for
10 central abuse hotline.--In addition to the requirements of s.
11 408.810(5), ~~On or before the first day home health services~~
12 ~~are provided to a patient, any home health agency or nurse~~
13 ~~registry licensed under this part must inform the patient and~~
14 ~~his or her immediate family, if appropriate, of the right to~~
15 ~~report abusive, neglectful, or exploitative practices. The~~
16 ~~statewide toll free telephone number for the central abuse~~
17 ~~hotline must be provided to patients in a manner that is~~
18 ~~clearly legible and must include the words: "To report abuse,~~
19 ~~neglect, or exploitation, please call toll free ...(phone~~
20 ~~number)...."~~ the Agency for Health Care Administration shall
21 adopt rules ~~that provide for 90 days' advance notice of a~~
22 ~~change in the toll free telephone number and~~ that outline due
23 process procedures, as provided under chapter 120, for home
24 health agency personnel and nurse registry personnel who are
25 reported to the central abuse hotline. Home health agencies
26 and nurse registries shall establish appropriate policies and
27 procedures for providing such notice to patients.

28 Section 113. Section 400.497, Florida Statutes, is
29 amended to read:

30 400.497 Rules establishing minimum standards.--The
31 agency shall adopt, publish, and enforce rules to implement

1 part II of chapter 408, this part, including, as applicable,
2 ss. 400.506 and 400.509, which must provide reasonable and
3 fair minimum standards relating to:

4 (1) The home health aide competency test and home
5 health aide training. The agency shall create the home health
6 aide competency test and establish the curriculum and
7 instructor qualifications for home health aide training.
8 Licensed home health agencies may provide this training and
9 shall furnish documentation of such training to other licensed
10 home health agencies upon request. Successful passage of the
11 competency test by home health aides may be substituted for
12 the training required under this section and any rule adopted
13 pursuant thereto.

14 (2) Shared staffing. The agency shall allow shared
15 staffing if the home health agency is part of a retirement
16 community that provides multiple levels of care, is located on
17 one campus, is licensed under this chapter, and otherwise
18 meets the requirements of law and rule.

19 (3) The criteria for the frequency of onsite licensure
20 surveys.

21 (4) Licensure application and renewal.

22 (5) The requirements for onsite and electronic
23 accessibility of supervisory personnel of home health
24 agencies.

25 (6) Information to be included in patients' records.

26 (7) Geographic service areas.

27 (8) Preparation of a comprehensive emergency
28 management plan pursuant to s. 400.492.

29 (a) The Agency for Health Care Administration shall
30 adopt rules establishing minimum criteria for the plan and
31

1 plan updates, with the concurrence of the Department of Health
2 and in consultation with the Department of Community Affairs.

3 (b) The rules must address the requirements in s.
4 400.492. In addition, the rules shall provide for the
5 maintenance of patient-specific medication lists that can
6 accompany patients who are transported from their homes.

7 (c) The plan is subject to review and approval by the
8 county health department. During its review, the county health
9 department shall ensure that the following agencies, at a
10 minimum, are given the opportunity to review the plan:

- 11 1. The local emergency management agency.
- 12 2. The Agency for Health Care Administration.
- 13 3. The local chapter of the American Red Cross or
14 other lead sheltering agency.
- 15 4. The district office of the Department of Children
16 and Family Services.

17
18 The county health department shall complete its review within
19 60 days after receipt of the plan and shall either approve the
20 plan or advise the home health agency of necessary revisions.

21 (d) For any home health agency that operates in more
22 than one county, the Department of Health shall review the
23 plan, after consulting with all of the county health
24 departments, the agency, and all the local chapters of the
25 American Red Cross or other lead sheltering agencies in the
26 areas of operation for that particular home health agency. The
27 Department of Health shall complete its review within 90 days
28 after receipt of the plan and shall either approve the plan or
29 advise the home health agency of necessary revisions. The
30 Department of Health shall make every effort to avoid imposing
31

1 differing requirements based on differences between counties
2 on the home health agency.

3 (e) The requirements in this subsection do not apply
4 to:

5 1. A facility that is certified under chapter 651 and
6 has a licensed home health agency used exclusively by
7 residents of the facility; or

8 2. A retirement community that consists of residential
9 units for independent living and either a licensed nursing
10 home or an assisted living facility, and has a licensed home
11 health agency used exclusively by the residents of the
12 retirement community, provided the comprehensive emergency
13 management plan for the facility or retirement community
14 provides for continuous care of all residents with special
15 needs during an emergency.

16 Section 114. Section 400.506, Florida Statutes, is
17 amended to read:

18 400.506 Licensure of nurse registries; requirements;
19 penalties.--

20 (1) A nurse registry is exempt from the licensing
21 requirements of a home health agency but must be licensed as a
22 nurse registry. The requirements of part II of chapter 408
23 apply to the provision of services that necessitate licensure
24 pursuant to 400.506-400.518 and part II of chapter 408 and to
25 entities licensed by or applying for such licensed from the
26 Agency for Health Care Administration pursuant to ss.
27 400.506-400.518. Each operational site of the nurse registry
28 must be licensed, unless there is more than one site within a
29 county. If there is more than one site within a county, only
30 one license per county is required. Each operational site
31 must be listed on the license.

1 (2) Each applicant for licensure must comply with all
2 provisions of part II of chapter 408, with the exception of s.
3 408.810(6) and (10). ~~the following requirements:~~

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

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

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

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

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

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

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

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

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

16 ~~(h) The agency may deny or revoke the license if any~~
17 ~~applicant:~~

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

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

27 (3) In accordance with s. 408.805, an applicant or
28 licensee shall pay a fee for each license application
29 submitted under ss. 400.508-400.518 and part II of chapter
30 408. The amount of the fee shall be established by rule and
31 may not exceed \$2,000 per biennium. Application for license

1 ~~must be made to the Agency for Health Care Administration on~~
2 ~~forms furnished by it and must be accompanied by the~~
3 ~~appropriate licensure fee, as established by rule and not to~~
4 ~~exceed the cost of regulation under this part. The licensure~~
5 ~~fee for nurse registries may not exceed \$1,000 and must be~~
6 ~~deposited in the Health Care Trust Fund.~~

7 ~~(4) The Agency for Health Care Administration may~~
8 ~~deny, revoke, or suspend a license or impose an administrative~~
9 ~~fine in the manner provided in chapter 120 against a nurse~~
10 ~~registry that:~~

11 ~~(a) Fails to comply with this section or applicable~~
12 ~~rules.~~

13 ~~(b) Commits an intentional, reckless, or negligent act~~
14 ~~that materially affects the health or safety of a person~~
15 ~~receiving services.~~

16 ~~(5) A license issued for the operation of a nurse~~
17 ~~registry, unless sooner suspended or revoked, expires 1 year~~
18 ~~after its date of issuance. Sixty days before the expiration~~
19 ~~date, an application for renewal must be submitted to the~~
20 ~~Agency for Health Care Administration on forms furnished by~~
21 ~~it. The Agency for Health Care Administration shall renew the~~
22 ~~license if the applicant has met the requirements of this~~
23 ~~section and applicable rules. A nurse registry against which~~
24 ~~a revocation or suspension proceeding is pending at the time~~
25 ~~of license renewal may be issued a conditional license~~
26 ~~effective until final disposition by the Agency for Health~~
27 ~~Care Administration of such proceedings. If judicial relief is~~
28 ~~sought from the final disposition, the court having~~
29 ~~jurisdiction may issue a conditional license for the duration~~
30 ~~of the judicial proceeding.~~

1 ~~(6) The Agency for Health Care Administration may~~
2 ~~institute injunctive proceedings under s. 400.515.~~

3 (4)(7) A person that offers or advertises to the
4 public that it provides any service for which licensure is
5 required under this section must include in such advertisement
6 the license number issued to it by the Agency for Health Care
7 Administration.

8 ~~(8) It is unlawful for a person to offer or advertise~~
9 ~~to the public services as defined by rule without obtaining a~~
10 ~~valid license from the Agency for Health Care Administration.~~
11 ~~It is unlawful for any holder of a license to advertise or~~
12 ~~hold out to the public that he or she holds a license for~~
13 ~~other than that for which he or she actually holds a license.~~
14 ~~A person who violates this subsection is subject to injunctive~~
15 ~~proceedings under s. 400.515.~~

16 ~~(9) Any duly authorized officer or employee of the~~
17 ~~Agency for Health Care Administration may make such~~
18 ~~inspections and investigations as are necessary to respond to~~
19 ~~complaints or to determine the state of compliance with this~~
20 ~~section and applicable rules.~~

21 ~~(a) If, in responding to a complaint, an agent or~~
22 ~~employee of the Agency for Health Care Administration has~~
23 ~~reason to believe that a crime has been committed, he or she~~
24 ~~shall notify the appropriate law enforcement agency.~~

25 ~~(b) If, in responding to a complaint, an agent or~~
26 ~~employee of the Agency for Health Care Administration has~~
27 ~~reason to believe that abuse, neglect, or exploitation has~~
28 ~~occurred, according to the definitions in chapter 415, he or~~
29 ~~she shall file a report under chapter 415.~~

30 (5)(10)(a) A nurse registry may refer for contract in
31 private residences registered nurses and licensed practical

1 nurses registered and licensed under part I of chapter 464,
2 certified nursing assistants certified under part II of
3 chapter 464, home health aides who present documented proof of
4 successful completion of the training required by rule of the
5 agency, and companions or homemakers for the purposes of
6 providing those services authorized under s. 400.509(1). Each
7 person referred by a nurse registry must provide current
8 documentation that he or she is free from communicable
9 diseases.

10 (b) A certified nursing assistant or home health aide
11 may be referred for a contract to provide care to a patient in
12 his or her home only if that patient is under a physician's
13 care. A certified nursing assistant or home health aide
14 referred for contract in a private residence shall be limited
15 to assisting a patient with bathing, dressing, toileting,
16 grooming, eating, physical transfer, and those normal daily
17 routines the patient could perform for himself or herself were
18 he or she physically capable. A certified nursing assistant
19 or home health aide may not provide medical or other health
20 care services that require specialized training and that may
21 be performed only by licensed health care professionals. The
22 nurse registry shall obtain the name and address of the
23 attending physician and send written notification to the
24 physician within 48 hours after a contract is concluded that a
25 certified nursing assistant or home health aide will be
26 providing care for that patient.

27 (c) A registered nurse shall make monthly visits to
28 the patient's home to assess the patient's condition and
29 quality of care being provided by the certified nursing
30 assistant or home health aide. Any condition which in the
31 professional judgment of the nurse requires further medical

1 attention shall be reported to the attending physician and the
2 nurse registry. The assessment shall become a part of the
3 patient's file with the nurse registry and may be reviewed by
4 the agency during their survey procedure.

5 ~~(6)(11)~~ A person who is referred by a nurse registry
6 for contract in private residences and who is not a nurse
7 licensed under part I of chapter 464 may perform only those
8 services or care to clients that the person has been certified
9 to perform or trained to perform as required by law or rules
10 of the Agency for Health Care Administration or the Department
11 of Business and Professional Regulation. Providing services
12 beyond the scope authorized under this subsection constitutes
13 the unauthorized practice of medicine or a violation of the
14 Nurse Practice Act and is punishable as provided under chapter
15 458, chapter 459, or part I of chapter 464.

16 ~~(7)(12)~~ Each nurse registry must require every
17 applicant for contract to complete an application form
18 providing the following information:

19 (a) The name, address, date of birth, and social
20 security number of the applicant.

21 (b) The educational background and employment history
22 of the applicant.

23 (c) The number and date of the applicable license or
24 certification.

25 (d) When appropriate, information concerning the
26 renewal of the applicable license, registration, or
27 certification.

28 ~~(8)(13)~~ Each nurse registry must comply with the
29 procedures set forth in s. 400.512 for maintaining records of
30 the employment history of all persons referred for contract
31 and is subject to the standards and conditions set forth in

1 that section. However, an initial screening may not be
2 required for persons who have been continuously registered
3 with the nurse registry since September 30, 1990.

4 ~~(9)~~(14) The nurse registry must maintain the
5 application on file, and that file must be open to the
6 inspection of the Agency for Health Care Administration. The
7 nurse registry must maintain on file the name and address of
8 the client to whom the nurse or other nurse registry personnel
9 is sent for contract and the amount of the fee received by the
10 nurse registry. A nurse registry must maintain the file that
11 includes the application and other applicable documentation
12 for 3 years after the date of the last file entry of
13 client-related information.

14 ~~(10)~~(15) Nurse registries shall assist persons who
15 would need assistance and sheltering during evacuations
16 because of physical, mental, or sensory disabilities in
17 registering with the appropriate local emergency management
18 agency pursuant to s. 252.355.

19 ~~(11)~~(16) Each nurse registry shall prepare and
20 maintain a comprehensive emergency management plan that is
21 consistent with the criteria in this subsection and with the
22 local special needs plan. The plan shall be updated annually.
23 The plan shall specify how the nurse registry shall facilitate
24 the provision of continuous care by persons referred for
25 contract to persons who are registered pursuant to s. 252.355
26 during an emergency that interrupts the provision of care or
27 services in private residencies.

28 (a) All persons referred for contract who care for
29 persons registered pursuant to s. 252.355 must include in the
30 patient record a description of how care will be continued
31 during a disaster or emergency that interrupts the provision

1 of care in the patient's home. It shall be the responsibility
2 of the person referred for contract to ensure that continuous
3 care is provided.

4 (b) Each nurse registry shall maintain a current
5 prioritized list of patients in private residences who are
6 registered pursuant to s. 252.355 and are under the care of
7 persons referred for contract and who need continued services
8 during an emergency. This list shall indicate, for each
9 patient, if the client is to be transported to a special needs
10 shelter and if the patient is receiving skilled nursing
11 services. Nurse registries shall make this list available to
12 county health departments and to local emergency management
13 agencies upon request.

14 (c) Each person referred for contract who is caring
15 for a patient who is registered pursuant to s. 252.355 shall
16 provide a list of the patient's medication and equipment needs
17 to the nurse registry. Each person referred for contract shall
18 make this information available to county health departments
19 and to local emergency management agencies upon request.

20 (d) Each person referred for contract shall not be
21 required to continue to provide care to patients in emergency
22 situations that are beyond the person's control and that make
23 it impossible to provide services, such as when roads are
24 impassable or when patients do not go to the location
25 specified in their patient records.

26 (e) The comprehensive emergency management plan
27 required by this subsection is subject to review and approval
28 by the county health department. During its review, the county
29 health department shall ensure that, at a minimum, the local
30 emergency management agency, the Agency for Health Care
31 Administration, and the local chapter of the American Red

1 Cross or other lead sheltering agency are given the
2 opportunity to review the plan. The county health department
3 shall complete its review within 60 days after receipt of the
4 plan and shall either approve the plan or advise the nurse
5 registry of necessary revisions.

6 (f) The Agency for Health Care Administration shall
7 adopt rules establishing minimum criteria for the
8 comprehensive emergency management plan and plan updates
9 required by this subsection, with the concurrence of the
10 Department of Health and in consultation with the Department
11 of Community Affairs.

12 ~~(12)~~~~(17)~~ All persons referred for contract in private
13 residences by a nurse registry must comply with the following
14 requirements for a plan of treatment:

15 (a) When, in accordance with the privileges and
16 restrictions imposed upon a nurse under part I of chapter 464,
17 the delivery of care to a patient is under the direction or
18 supervision of a physician or when a physician is responsible
19 for the medical care of the patient, a medical plan of
20 treatment must be established for each patient receiving care
21 or treatment provided by a licensed nurse in the home. The
22 original medical plan of treatment must be timely signed by
23 the physician and reviewed by him or her in consultation with
24 the licensed nurse at least every 2 months. Any additional
25 order or change in orders must be obtained from the physician
26 and reduced to writing and timely signed by the physician.
27 The delivery of care under a medical plan of treatment must be
28 substantiated by the appropriate nursing notes or
29 documentation made by the nurse in compliance with nursing
30 practices established under part I of chapter 464.

31

1 (b) Whenever a medical plan of treatment is
2 established for a patient, the initial medical plan of
3 treatment, any amendment to the plan, additional order or
4 change in orders, and copy of nursing notes must be filed in
5 the office of the nurse registry.

6 ~~(13)(18)~~ The nurse registry must comply with the
7 notice requirements of s. 400.495, relating to abuse
8 reporting.

9 ~~(14)(19)~~ In addition to any other penalties imposed
10 pursuant to this section or part, the agency may assess costs
11 related to an investigation that results in a successful
12 prosecution, ~~excluding costs associated with an attorney's~~
13 ~~time. If the agency imposes such an assessment and the~~
14 ~~assessment is not paid, and if challenged is not the subject~~
15 ~~of a pending appeal, prior to the renewal of the license, the~~
16 ~~license shall not be issued until the assessment is paid or~~
17 ~~arrangements for payment of the assessment are made.~~

18 ~~(15)(20)~~ The Agency for Health Care Administration
19 shall adopt rules to implement this section and part II of
20 chapter 408.

21 Section 115. Section 400.509, Florida Statutes, is
22 amended to read:

23 400.509 Registration of particular service providers
24 exempt from licensure; certificate of registration; regulation
25 of registrants.--

26 (1) Any organization that provides companion services
27 or homemaker services and does not provide a home health
28 service to a person is exempt from licensure under this part.
29 However, any organization that provides companion services or
30 homemaker services must register with the agency.

31

1 (2) The requirements of part II of chapter 408 apply
2 to the provision of services that necessitate registration or
3 licensure pursuant to ss. 400.509-400.512 and ss.
4 408.801-408.819 and to entities registered by or applying for
5 such registration from the Agency for Health Care
6 Administration pursuant to ss. 400.509-400.512. Each applicant
7 for registration must comply with all provisions of part II of
8 chapter 408, with the exception of s. 408.810(6)-(10).
9 ~~Registration consists of annually filing with the agency,~~
10 ~~under oath, on forms provided by it, the following~~
11 ~~information:~~
12 ~~(a) If the registrant is a firm or partnership, the~~
13 ~~name, address, date of birth, and social security number of~~
14 ~~every member.~~
15 ~~(b) If the registrant is a corporation or association,~~
16 ~~its name and address; the name, address, date of birth, and~~
17 ~~social security number of each of its directors and officers;~~
18 ~~and the name and address of each person having at least a 5~~
19 ~~percent interest in the corporation or association.~~
20 ~~(c) The name, address, date of birth, and social~~
21 ~~security number of each person employed by or under contract~~
22 ~~with the organization.~~
23 (3) In accordance with s. 408.805, an applicant or
24 registrant shall pay a fee for each registration issued under
25 this part and part II of chapter 408. The amount of the fee
26 shall be \$50 per biennium. The agency shall charge a
27 registration fee of \$25 to be submitted with the information
28 required under subsection (2).
29 ~~(4) Each applicant for registration must comply with~~
30 ~~the following requirements:~~
31

1 ~~(a) Upon receipt of a completed, signed, and dated~~
2 ~~application, the agency shall require background screening, in~~
3 ~~accordance with the level 1 standards for screening set forth~~
4 ~~in chapter 435, of every individual who will have contact with~~
5 ~~the client. The agency shall require background screening of~~
6 ~~the managing employee or other similarly titled individual who~~
7 ~~is responsible for the operation of the entity, and of the~~
8 ~~financial officer or other similarly titled individual who is~~
9 ~~responsible for the financial operation of the entity,~~
10 ~~including billings for client services in accordance with the~~
11 ~~level 2 standards for background screening as set forth in~~
12 ~~chapter 435.~~

13 ~~(b) The agency may require background screening of any~~
14 ~~other individual who is affiliated with the applicant if the~~
15 ~~agency has a reasonable basis for believing that he or she has~~
16 ~~been convicted of a crime or has committed any other offense~~
17 ~~prohibited under the level 2 standards for screening set forth~~
18 ~~in chapter 435.~~

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

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

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

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

21 ~~(f) Each applicant must submit to the agency a~~
22 ~~description and explanation of any conviction of an offense~~
23 ~~prohibited under the level 2 standards of chapter 435 which~~
24 ~~was committed by a member of the board of directors of the~~
25 ~~applicant, its officers, or any individual owning 5 percent or~~
26 ~~more of the applicant. This requirement does not apply to a~~
27 ~~director of a not for profit corporation or organization who~~
28 ~~serves solely in a voluntary capacity for the corporation or~~
29 ~~organization, does not regularly take part in the day to day~~
30 ~~operational decisions of the corporation or organization,~~
31 ~~receives no remuneration for his or her services on the~~

1 ~~corporation's or organization's board of directors, and has no~~
2 ~~financial interest and no family members having a financial~~
3 ~~interest in the corporation or organization, if the director~~
4 ~~and the not for profit corporation or organization include in~~
5 ~~the application a statement affirming that the director's~~
6 ~~relationship to the corporation satisfies the requirements of~~
7 ~~this paragraph.~~

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

15 ~~(h) The agency may deny or revoke the registration of~~
16 ~~any applicant who:~~

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

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

24 ~~(i) An application for licensure renewal must contain~~
25 ~~the information required under paragraphs (c) and (f).~~

26 ~~(4)(5)~~ Each registrant must obtain the employment or
27 contract history of persons who are employed by or under
28 contract with the organization and who will have contact at
29 any time with patients or clients in their homes by:

30 (a) Requiring such persons to submit an employment or
31 contractual history to the registrant; and

1 (b) Verifying the employment or contractual history,
2 unless through diligent efforts such verification is not
3 possible. The agency shall prescribe by rule the minimum
4 requirements for establishing that diligent efforts have been
5 made.

6
7 There is no monetary liability on the part of, and no cause of
8 action for damages arises against, a former employer of a
9 prospective employee of or prospective independent contractor
10 with a registrant who reasonably and in good faith
11 communicates his or her honest opinions about the former
12 employee's or contractor's job performance. This subsection
13 does not affect the official immunity of an officer or
14 employee of a public corporation.

15 ~~(6) On or before the first day on which services are~~
16 ~~provided to a patient or client, any registrant under this~~
17 ~~part must inform the patient or client and his or her~~
18 ~~immediate family, if appropriate, of the right to report~~
19 ~~abusive, neglectful, or exploitative practices. The statewide~~
20 ~~toll free telephone number for the central abuse hotline must~~
21 ~~be provided to patients or clients in a manner that is clearly~~
22 ~~legible and must include the words: "To report abuse, neglect,~~
23 ~~or exploitation, please call toll free ... (phone number)...."~~
24 ~~Registrants must establish appropriate policies and procedures~~
25 ~~for providing such notice to patients or clients.~~

26 ~~(7) The provisions of s. 400.512 regarding screening~~
27 ~~apply to any person or business entity registered under this~~
28 ~~section on or after October 1, 1994.~~

29 ~~(8) Upon verification that all requirements for~~
30 ~~registration have been met, the Agency for Health Care~~
31

1 ~~Administration shall issue a certificate of registration valid~~
2 ~~for no more than 1 year.~~

3 ~~(9) The Agency for Health Care Administration may~~
4 ~~deny, suspend, or revoke the registration of a person that:~~

5 ~~(a) Fails to comply with this section or applicable~~
6 ~~rules.~~

7 ~~(b) Commits an intentional, reckless, or negligent act~~
8 ~~that materially affects the health or safety of a person~~
9 ~~receiving services.~~

10 ~~(10) The Agency for Health Care Administration may~~
11 ~~institute injunctive proceedings under s. 400.515.~~

12 (5)(11) A person that offers or advertises to the
13 public a service for which registration is required must
14 include in its advertisement the registration number issued by
15 the Agency for Health Care Administration.

16 ~~(12) It is unlawful for a person to offer or advertise~~
17 ~~to the public services, as defined by rule, without obtaining~~
18 ~~a certificate of registration from the Agency for Health Care~~
19 ~~Administration. It is unlawful for any holder of a~~
20 ~~certificate of registration to advertise or hold out to the~~
21 ~~public that he or she holds a certificate of registration for~~
22 ~~other than that for which he or she actually holds a~~
23 ~~certificate of registration. Any person who violates this~~
24 ~~subsection is subject to injunctive proceedings under s.~~
25 ~~400.515.~~

26 ~~(13) Any duly authorized officer or employee of the~~
27 ~~Agency for Health Care Administration has the right to make~~
28 ~~such inspections and investigations as are necessary in order~~
29 ~~to respond to complaints or to determine the state of~~
30 ~~compliance with this section and applicable rules.~~

31

1 ~~(a) If, in responding to a complaint, an officer or~~
2 ~~employee of the Agency for Health Care Administration has~~
3 ~~reason to believe that a crime has been committed, he or she~~
4 ~~shall notify the appropriate law enforcement agency.~~

5 ~~(b) If, in responding to a complaint, an officer or~~
6 ~~employee of the Agency for Health Care Administration has~~
7 ~~reason to believe that abuse, neglect, or exploitation has~~
8 ~~occurred, according to the definitions in chapter 415, he or~~
9 ~~she shall file a report under chapter 415.~~

10 ~~(6)(14)~~ In addition to any other penalties imposed
11 pursuant to this section or part, the agency may assess costs
12 related to an investigation that results in a successful
13 prosecution, excluding costs associated with an attorney's
14 time. If the agency imposes such an assessment and the
15 assessment is not paid, and if challenged is not the subject
16 of a pending appeal, prior to the renewal of the registration,
17 the registration shall not be issued until the assessment is
18 paid or arrangements for payment of the assessment are made.

19 ~~(7)(15)~~ The Agency for Health Care Administration
20 shall adopt rules to administer this section and part II of
21 chapter 408.

22 ~~(8) Notwithstanding the penalties provided in s.~~
23 408.812(3), any registrant that provides personal care to a
24 client in the client's private residence commits a misdemeanor
25 of the first degree, punishable as provided in s. 775.082 or
26 s. 775.083, if the client's residence is not a facility
27 licensed in accordance with part II of chapter 408. Section
28 408.812 applies to all other unlicensed activity by a
29 registrant, including the offering or advertising of any
30 service that necessitates licensure under part II of chapter
31 408.

1 Section 116. Subsections (2) and (7) of section
2 400.512, Florida Statutes, are amended to read:

3 400.512 Screening of home health agency personnel;
4 nurse registry personnel; and companions and homemakers.--The
5 agency shall require employment or contractor screening as
6 provided in chapter 435, using the level 1 standards for
7 screening set forth in that chapter, for home health agency
8 personnel; persons referred for employment by nurse
9 registries; and persons employed by companion or homemaker
10 services registered under s. 400.509.

11 ~~(2) The administrator of each home health agency, the~~
12 ~~managing employee of each nurse registry, and the managing~~
13 ~~employee of each companion or homemaker service registered~~
14 ~~under s. 400.509 must sign an affidavit annually, under~~
15 ~~penalty of perjury, stating that all personnel hired,~~
16 ~~contracted with, or registered on or after October 1, 1994,~~
17 ~~who enter the home of a patient or client in their service~~
18 ~~capacity have been screened and that its remaining personnel~~
19 ~~have worked for the home health agency or registrant~~
20 ~~continuously since before October 1, 1994.~~

21 (7)(a) It is a misdemeanor of the first degree,
22 punishable under s. 775.082 or s. 775.083, for any person
23 willfully, knowingly, or intentionally to:

24 1. Fail, by false statement, misrepresentation,
25 impersonation, or other fraudulent means, to disclose in any
26 application for voluntary or paid employment a material fact
27 used in making a determination as to such person's
28 qualifications to be an employee under this section;

29 ~~2. Operate or attempt to operate an entity licensed or~~
30 ~~registered under this part with persons who do not meet the~~

31

1 ~~minimum standards for good moral character as contained in~~
2 ~~this section;~~ or

3 ~~2.3-~~ Use information from the criminal records
4 obtained under this section for any purpose other than
5 screening that person for employment as specified in this
6 section or release such information to any other person for
7 any purpose other than screening for employment under this
8 section.

9 (b) It is a felony of the third degree, punishable
10 under s. 775.082, s. 775.083, or s. 775.084, for any person
11 willfully, knowingly, or intentionally to use information from
12 the juvenile records of a person obtained under this section
13 for any purpose other than screening for employment under this
14 section.

15 Section 117. Section 400.515, Florida Statutes, is
16 repealed.

17 Section 118. Subsections (6) and (7) of section
18 400.551, Florida Statutes, are amended to read:

19 400.551 Definitions.--As used in this part, the term:

20 (6) "Operator" means the licensee or person having
21 general administrative charge of an adult day care center.

22 (7) "Owner" means the licensee ~~owner~~ of an adult day
23 care center.

24 Section 119. Section 400.554, Florida Statutes, is
25 amended to read:

26 400.554 License requirement; fee; exemption;
27 display.--

28 (1) The requirements of part II of chapter 408 apply
29 to the provision of services that necessitate licensure
30 pursuant to this part and part II of chapter 408 and to
31 entities licensed by or applying for such licensure from the

1 Agency for Health Care Administration pursuant to this part.
2 However, an applicant for licensure is exempt from the
3 provisions of s. 408.810(10). It is unlawful to operate an
4 adult day care center without first obtaining from the agency
5 a license authorizing such operation. The agency is
6 responsible for licensing adult day care centers in accordance
7 with this part.

8 (2) Separate licenses are required for centers
9 operated on separate premises, even though operated under the
10 same management. Separate licenses are not required for
11 separate buildings on the same premises.

12 (3) In accordance with s. 408.805, an applicant or
13 licensee shall pay a fee for each license application
14 submitted under this part and part II of chapter 408. The
15 amount of the fee shall be established by rule and The
16 biennial license fee required of a center shall be determined
17 by the department, but may not exceed \$150 per biennium.

18 (4) County-operated or municipally operated centers
19 applying for licensure under this part are exempt from the
20 payment of license fees.

21 ~~(5) The license for a center shall be displayed in a~~
22 ~~conspicuous place inside the center.~~

23 ~~(6) A license is valid only in the possession of the~~
24 ~~individual, firm, partnership, association, or corporation to~~
25 ~~which it is issued and is not subject to sale, assignment, or~~
26 ~~other transfer, voluntary or involuntary; nor is a license~~
27 ~~valid for any premises other than the premises for which~~
28 ~~originally issued.~~

29 Section 120. Section 400.555, Florida Statutes, is
30 amended to read:

31 400.555 Application for license.--

1 ~~(1) An application for a license to operate an adult~~
2 ~~day care center must be made to the agency on forms furnished~~
3 ~~by the agency and must be accompanied by the appropriate~~
4 ~~license fee unless the applicant is exempt from payment of the~~
5 ~~fee as provided in s. 400.554(4).~~

6 ~~(2) In addition to all provisions of part II of~~
7 ~~chapter 408, the applicant for licensure must furnish:~~

8 ~~(a) a description of the physical and mental~~
9 ~~capabilities and needs of the participants to be served and~~
10 ~~the availability, frequency, and intensity of basic services~~
11 ~~and of supportive and optional services to be provided.~~

12 ~~(b) Satisfactory proof of financial ability to operate~~
13 ~~and conduct the center in accordance with the requirements of~~
14 ~~this part, which must include, in the case of an initial~~
15 ~~application, a 1 year operating plan and proof of a 3 month~~
16 ~~operating reserve fund; and~~

17 ~~(c) Proof of adequate liability insurance coverage.~~

18 ~~(d) Proof of compliance with level 2 background~~
19 ~~screening as required under s. 400.5572.~~

20 ~~(e) A description and explanation of any exclusions,~~
21 ~~permanent suspensions, or terminations of the application from~~
22 ~~the Medicare or Medicaid programs. Proof of compliance with~~
23 ~~disclosure of ownership and control interest requirements of~~
24 ~~the Medicare or Medicaid programs shall be accepted in lieu of~~
25 ~~this submission.~~

26 Section 121. Section 400.556, Florida Statutes, is
27 amended to read:

28 400.556 Denial or, ~~suspension,~~ revocation of license;
29 emergency action; administrative fines; investigations and
30 inspections.--

31

1 (1) The agency may deny ~~or,~~ revoke, ~~or suspend~~ a
2 license under this part, impose an action under s. 408.814, or
3 ~~may~~ impose an administrative fine against the owner of an
4 adult day care center or its operator or employee in the
5 manner provided in chapter 120 for a violation of any
6 provision of this part, part II of chapter 408, or applicable
7 rules.

8 (2) Each of the following actions by the owner of an
9 adult day care center or by its operator or employee is a
10 ground for action by the agency against the owner of the
11 center or its operator or employee:

12 (a) An intentional or negligent act materially
13 affecting the health or safety of center participants.

14 ~~(b) A violation of this part or of any standard or~~
15 ~~rule under this part.~~

16 (b)(c) A failure of persons subject to level 2
17 background screening under s. 400.4174(1) to meet the
18 screening standards of s. 435.04, or the retention by the
19 center of an employee subject to level 1 background screening
20 standards under s. 400.4174(2) who does not meet the screening
21 standards of s. 435.03 and for whom exemptions from
22 disqualification have not been provided by the agency.

23 (c)(d) Failure to follow the criteria and procedures
24 provided under part I of chapter 394 relating to the
25 transportation, voluntary admission, and involuntary
26 examination of center participants.

27 (d)(e) Multiple or repeated violations of this part or
28 of any standard or rule adopted under this part or part II of
29 chapter 408.

30 ~~(f) Exclusion, permanent suspension, or termination of~~
31 ~~the owner, if an individual, officer, or board member of the~~

1 ~~adult day care center, if the owner is a firm, corporation,~~
2 ~~partnership, or association, or any person owning 5 percent or~~
3 ~~more of the center, from the Medicare or Medicaid program.~~

4 (3) The agency is responsible for all investigations
5 and inspections conducted pursuant to this part.

6 Section 122. Section 400.5565, Florida Statutes, is
7 amended to read:

8 400.5565 Administrative fines; ~~interest~~.--

9 (1)(a) If the agency determines that an adult day care
10 center is not operated in compliance with this part, part II
11 of chapter 408, or applicable with rules adopted under this
12 ~~part~~, the agency, notwithstanding any other administrative
13 action it takes, shall make a reasonable attempt to discuss
14 with the owner each violation and recommended corrective
15 action prior to providing the owner with written notification.
16 The agency may request the submission of a corrective action
17 plan for the center which demonstrates a good faith effort to
18 remedy each violation by a specific date, subject to the
19 approval of the agency.

20 (b) The owner of a center or its operator or employee
21 found in violation of this part, part II of chapter 408, or
22 applicable of rules adopted under this part may be fined by
23 the agency. A fine may not exceed \$500 for each violation.
24 In no event, however, may such fines in the aggregate exceed
25 \$5,000.

26 (c) The failure to correct a violation by the date set
27 by the agency, or the failure to comply with an approved
28 corrective action plan, is a separate violation for each day
29 such failure continues, unless the agency approves an
30 extension to a specific date.

31

1 ~~(d) If the owner of a center or its operator or~~
2 ~~employee appeals an agency action under this section and the~~
3 ~~fine is upheld, the violator shall pay the fine, plus interest~~
4 ~~at the legal rate specified in s. 687.01 for each day that the~~
5 ~~fine remains unpaid after the date set by the agency for~~
6 ~~payment of the fine.~~

7 (2) In determining whether to impose a fine and in
8 fixing the amount of any fine, the agency shall consider the
9 following factors:

10 (a) The gravity of the violation, including the
11 probability that death or serious physical or emotional harm
12 to a participant will result or has resulted, the severity of
13 the actual or potential harm, and the extent to which the
14 provisions of the applicable statutes or rules were violated.

15 (b) Actions taken by the owner or operator to correct
16 violations.

17 (c) Any previous violations.

18 (d) The financial benefit to the center of committing
19 or continuing the violation.

20 Section 123. Section 400.557, Florida Statutes, is
21 amended to read:

22 400.557 ~~Expiration of license; renewal;~~ Conditional
23 license or permit.--

24 ~~(1) A license issued for the operation of an adult day~~
25 ~~care center, unless sooner suspended or revoked, expires 2~~
26 ~~years after the date of issuance. The agency shall notify a~~
27 ~~licensee at least 120 days before the expiration date that~~
28 ~~license renewal is required to continue operation. The~~
29 ~~notification must be provided electronically or by mail~~
30 ~~delivery. At least 90 days prior to the expiration date, an~~
31 ~~application for renewal must be submitted to the agency. A~~

1 ~~license shall be renewed, upon the filing of an application on~~
2 ~~forms furnished by the agency, if the applicant has first met~~
3 ~~the requirements of this part and of the rules adopted under~~
4 ~~this part. The applicant must file with the application~~
5 ~~satisfactory proof of financial ability to operate the center~~
6 ~~in accordance with the requirements of this part and in~~
7 ~~accordance with the needs of the participants to be served and~~
8 ~~an affidavit of compliance with the background screening~~
9 ~~requirements of s. 400.5572.~~

10 ~~(2) A licensee against whom a revocation or suspension~~
11 ~~proceeding is pending at the time for license renewal may be~~
12 ~~issued a conditional license effective until final disposition~~
13 ~~by the agency of the proceeding. If judicial relief is sought~~
14 ~~from the final disposition, the court having jurisdiction may~~
15 ~~issue a conditional permit effective for the duration of the~~
16 ~~judicial proceeding.~~

17 ~~(3) The agency may issue a conditional license to an~~
18 ~~applicant for license renewal or change of ownership if the~~
19 ~~applicant fails to meet all standards and requirements for~~
20 ~~licensure. A conditional license issued under this subsection~~
21 ~~must be limited to a specific period not exceeding 6 months,~~
22 ~~as determined by the agency, and must be accompanied by an~~
23 ~~approved plan of correction.~~

24 Section 124. Section 400.5572, Florida Statutes, is
25 amended to read:

26 400.5572 Background screening.--

27 ~~(1)(a) Level 2 background screening must be conducted~~
28 ~~on each of the following persons, who shall be considered~~
29 ~~employees for the purposes of conducting screening under~~
30 ~~chapter 435:~~

1 ~~1. The adult day care center owner if an individual,~~
2 ~~the operator, and the financial officer.~~

3 ~~2. An officer or board member if the owner of the~~
4 ~~adult day care center is a firm, corporation, partnership, or~~
5 ~~association, or any person owning 5 percent or more of the~~
6 ~~facility, if the agency has probable cause to believe that~~
7 ~~such person has been convicted of any offense prohibited by s.~~
8 ~~435.04. For each officer, board member, or person owning 5~~
9 ~~percent or more who has been convicted of any such offense,~~
10 ~~the facility shall submit to the agency a description and~~
11 ~~explanation of the conviction at the time of license~~
12 ~~application. This subparagraph does not apply to a board~~
13 ~~member of a not for profit corporation or organization if the~~
14 ~~board member serves solely in a voluntary capacity, does not~~
15 ~~regularly take part in the day to day operational decisions of~~
16 ~~the corporation or organization, receives no remuneration for~~
17 ~~his or her services, and has no financial interest and has no~~
18 ~~family members with a financial interest in the corporation or~~
19 ~~organization, provided that the board member and facility~~
20 ~~submit a statement affirming that the board member's~~
21 ~~relationship to the facility satisfies the requirements of~~
22 ~~this subparagraph.~~

23 ~~(b) Proof of compliance with level 2 screening~~
24 ~~standards which has been submitted within the previous 5 years~~
25 ~~to meet any facility or professional licensure requirements of~~
26 ~~the agency or the Department of Health satisfies the~~
27 ~~requirements of this subsection.~~

28 ~~(c) The agency may grant a provisional license to an~~
29 ~~adult day care center applying for an initial license when~~
30 ~~each individual required by this subsection to undergo~~
31 ~~screening has completed the Department of Law Enforcement~~

1 ~~background check, but has not yet received results from the~~
2 ~~Federal Bureau of Investigation, or when a request for an~~
3 ~~exemption from disqualification has been submitted to the~~
4 ~~agency pursuant to s. 435.07, but a response has not been~~
5 ~~issued.~~

6 ~~(2)~~ The owner or administrator of an adult day care
7 center must conduct level 1 background screening as set forth
8 in chapter 435 on all employees hired on or after October 1,
9 1998, who provide basic services or supportive and optional
10 services to the participants. Such persons satisfy this
11 requirement if:

12 (1)(a) Proof of compliance with level 1 screening
13 requirements obtained to meet any professional license
14 requirements in this state is provided and accompanied, under
15 penalty of perjury, by a copy of the person's current
16 professional license and an affidavit of current compliance
17 with the background screening requirements.

18 (2)(b) The person required to be screened has been
19 continuously employed, without a breach in service that
20 exceeds 180 days, in the same type of occupation for which the
21 person is seeking employment and provides proof of compliance
22 with the level 1 screening requirement which is no more than 2
23 years old. Proof of compliance must be provided directly from
24 one employer or contractor to another, and not from the person
25 screened. Upon request, a copy of screening results shall be
26 provided to the person screened by the employer retaining
27 documentation of the screening.

28 (3)(c) The person required to be screened is employed
29 by a corporation or business entity or related corporation or
30 business entity that owns, operates, or manages more than one
31 facility or agency licensed under this chapter, and for whom a

1 level 1 screening was conducted by the corporation or business
2 entity as a condition of initial or continued employment.

3 Section 125. Sections 400.5575 and 400.558, Florida
4 Statutes, are repealed.

5 Section 126. Section 400.559, Florida Statutes, is
6 amended to read:

7 400.559 Closing ~~or change of owner or operator~~ of
8 center.--

9 (1) Before operation of an adult day care center may
10 be voluntarily discontinued, the operator must inform the
11 ~~agency in writing~~ at least 60 days prior to the discontinuance
12 of operation. ~~The operator must also, at such time,~~ inform
13 each participant of the fact and the proposed date of such
14 discontinuance.

15 (2) ~~Immediately upon discontinuance of the operation~~
16 ~~of a center, the owner or operator shall surrender the license~~
17 ~~for the center to the agency, and the license shall be~~
18 ~~canceled by the agency.~~

19 (3) ~~If a center has a change of ownership, the new~~
20 ~~owner shall apply to the agency for a new license at least 60~~
21 ~~days before the date of the change of ownership.~~

22 (4) ~~If a center has a change of operator, the new~~
23 ~~operator shall notify the agency in writing within 30 days~~
24 ~~after the change of operator.~~

25 Section 127. Section 400.56, Florida Statutes, is
26 amended to read:

27 400.56 Right of entry and inspection.--In accordance
28 with s. 408.811, ~~Any duly designated officer or employee of~~
29 the agency or department has the right to enter the premises
30 of any adult day care center licensed pursuant to this part,
31 at any reasonable time, in order to determine the state of

1 compliance with this part, part II of chapter 408, and
2 applicable the rules ~~or standards in force pursuant to this~~
3 ~~part. The right of entry and inspection also extends to any~~
4 ~~premises that the agency has reason to believe are being~~
5 ~~operated as a center without a license, but no entry or~~
6 ~~inspection of any unlicensed premises may be made without the~~
7 ~~permission of the owner or operator unless a warrant is first~~
8 ~~obtained from the circuit court authorizing entry or~~
9 ~~inspection. Any application for a center license or license~~
10 ~~renewal made pursuant to this part constitutes permission for,~~
11 ~~and complete acquiescence in, any entry or inspection of the~~
12 ~~premises for which the license is sought in order to~~
13 ~~facilitate verification of the information submitted on or in~~
14 ~~connection with the application.~~

15 Section 128. Section 400.562, Florida Statutes, is
16 amended to read:

17 400.562 Rules establishing standards.--

18 (1) The agency ~~Department of Elderly Affairs~~, in
19 conjunction with the Department of Elderly Affairs ~~agency~~,
20 shall adopt rules to implement the provisions of this part and
21 part II of chapter 408. The rules must include reasonable and
22 fair standards. Any conflict between these standards and those
23 that may be set forth in local, county, or municipal
24 ordinances shall be resolved in favor of those having
25 statewide effect. Such standards must relate to:

26 (a) The maintenance of adult day care centers with
27 respect to plumbing, heating, lighting, ventilation, and other
28 building conditions, including adequate meeting space, to
29 ensure the health, safety, and comfort of participants and
30 protection from fire hazard. Such standards may not conflict
31

1 with chapter 553 and must be based upon the size of the
2 structure and the number of participants.

3 (b) The number and qualifications of all personnel
4 employed by adult day care centers who have responsibilities
5 for the care of participants.

6 (c) All sanitary conditions within adult day care
7 centers and their surroundings, including water supply, sewage
8 disposal, food handling, and general hygiene, and maintenance
9 of sanitary conditions, to ensure the health and comfort of
10 participants.

11 (d) Basic services provided by adult day care centers.

12 (e) Supportive and optional services provided by adult
13 day care centers.

14 (f) Data and information relative to participants and
15 programs of adult day care centers, including, but not limited
16 to, the physical and mental capabilities and needs of the
17 participants, the availability, frequency, and intensity of
18 basic services and of supportive and optional services
19 provided, the frequency of participation, the distances
20 traveled by participants, the hours of operation, the number
21 of referrals to other centers or elsewhere, and the incidence
22 of illness.

23 (g) Components of a comprehensive emergency management
24 plan, developed in consultation with the Department of Health,
25 the Department of Elderly Affairs ~~Agency for Health Care~~
26 ~~Administration~~, and the Department of Community Affairs.

27 ~~(2) Pursuant to s. 119.07, the agency may charge a fee~~
28 ~~for furnishing a copy of this part, or of the rules adopted~~
29 ~~under this part, to any person upon request for the copy.~~

30 ~~(2)(3)~~ Pursuant to this part, s. 408.811, and
31 applicable rules ~~adopted by the department~~, the agency may

1 | conduct an abbreviated biennial inspection of key
2 | quality-of-care standards, in lieu of a full inspection, of a
3 | center that has a record of good performance. However, the
4 | agency must conduct a full inspection of a center that has had
5 | one or more confirmed complaints within the licensure period
6 | immediately preceding the inspection or which has a serious
7 | problem identified during the abbreviated inspection. The
8 | agency shall by rule develop the key quality-of-care
9 | standards, taking into consideration the comments and
10 | recommendations of the Department of Elderly Affairs and of
11 | provider groups. ~~These standards shall be included in rules~~
12 | ~~adopted by the Department of Elderly Affairs.~~

13 | Section 129. Section 400.564, Florida Statutes, is
14 | repealed.

15 | Section 130. Section 400.602, Florida Statutes, is
16 | amended to read:

17 | 400.602 Licensure required; prohibited acts;
18 | exemptions; ~~display~~, transferability of license.--

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

26 | ~~(b) It is unlawful for~~ Any person or legal entity not
27 | licensed as a hospice under this part may not ~~to~~ use the word
28 | "hospice" in its name, or ~~to~~ offer or advertise hospice
29 | services or hospice-like services in such a way as to mislead
30 | a person to believe that the offeror is a hospice licensed
31 | under this part.

1 (2) Services provided by a hospital, nursing home, or
2 other health care facility, health care provider, or
3 caregiver, or under the Community Care for the Elderly Act, do
4 not constitute a hospice unless the facility, provider, or
5 caregiver establishes a separate and distinct administrative
6 program to provide home, residential, and homelike inpatient
7 hospice services.

8 (3)(a) A separately licensed hospice may not use a
9 name which is substantially the same as the name of another
10 hospice licensed under this part.

11 (b) A licensed hospice which intends to change its
12 name or address must notify the agency at least 60 days before
13 making the change.

14 ~~(4) The license shall be displayed in a conspicuous~~
15 ~~place inside the hospice program office; shall be valid only~~
16 ~~in the possession of the person or public agency to which it~~
17 ~~is issued; shall not be subject to sale, assignment, or other~~
18 ~~transfer, voluntary or involuntary; and shall not be valid for~~
19 ~~any hospice other than the hospice for which originally~~
20 ~~issued.~~

21 (4)(5) Notwithstanding s. 400.601(3), any hospice
22 operating in corporate form exclusively as a hospice,
23 incorporated on or before July 1, 1978, may be transferred to
24 a for-profit or not-for-profit entity, and may transfer the
25 license to that entity.

26 (5)(6) Notwithstanding s. 400.601(3), at any time
27 after July 1, 1995, any entity entitled to licensure under
28 subsection (4)(5) may obtain a license for up to two
29 additional hospices in accordance with the other requirements
30 of this part and upon receipt of any certificate of need that
31 may be required under the provisions of ss. 408.031-408.045.

1 Section 131. Section 400.605, Florida Statutes, is
2 amended to read:

3 400.605 Administration; forms; fees; rules;
4 inspections; fines.--

5 (1) The agency ~~department~~, in consultation with the
6 department ~~agency~~, shall by rule establish minimum standards
7 and procedures for a hospice pursuant to this part and part II
8 of chapter 408. The rules must include:

9 ~~(a) License application procedures and requirements.~~

10 (a)(b) The qualifications of professional and
11 ancillary personnel to ensure the provision of appropriate and
12 adequate hospice care.

13 (b)(c) Standards and procedures for the administrative
14 management of a hospice.

15 (c)(d) Standards for hospice services that ensure the
16 provision of quality patient care.

17 (d)(e) Components of a patient plan of care.

18 (e)(f) Procedures relating to the implementation of
19 advanced directives and do-not-resuscitate orders.

20 (f)(g) Procedures for maintaining and ensuring
21 confidentiality of patient records.

22 (g)(h) Standards for hospice care provided in
23 freestanding inpatient facilities that are not otherwise
24 licensed medical facilities and in residential care facilities
25 such as nursing homes, assisted living facilities, adult
26 family care homes, and hospice residential units and
27 facilities.

28 (h)(i) Physical plant standards for hospice
29 residential and inpatient facilities and units.

30 (i)(j) Components of a comprehensive emergency
31 management plan, developed in consultation with the Department

1 of Health, the Department of Elderly Affairs, and the
2 Department of Community Affairs.

3 ~~(j)(k)~~ Standards and procedures relating to the
4 establishment and activities of a quality assurance and
5 utilization review committee.

6 ~~(k)(l)~~ Components and procedures relating to the
7 collection of patient demographic data and other information
8 on the provision of hospice care in this state.

9 (2) In accordance with s. 408.805, an applicant or
10 licensee shall pay a fee for each license application
11 submitted under this part and part II of chapter 408. The
12 amount of the fee shall be established by rule and may not
13 exceed \$1,200 per biennium. The agency shall:

14 ~~(a) Prepare and furnish all forms necessary under the~~
15 ~~provisions of this part in relation to applications for~~
16 ~~licensure or licensure renewals.~~

17 ~~(b) Collect from the applicant at the time of filing~~
18 ~~an application for a license or at the time of renewal of a~~
19 ~~license a fee which must be reasonably calculated to cover the~~
20 ~~cost of regulation under this part, but may not exceed \$600~~
21 ~~per program. All fees collected under this part shall be~~
22 ~~deposited in the Health Care Trust Fund for the administration~~
23 ~~of this part.~~

24 ~~(c) Issue hospice licenses to all applicants which~~
25 ~~meet the provisions of this part and applicable rules.~~

26 (3)~~(d)~~ In accordance with s. 408.811, the agency shall
27 conduct annual licensure inspections of all licensees, except
28 that licensure inspections may be conducted biennially for
29 hospices having a 3-year record of substantial compliance. The
30 agency shall

31

1 (e) conduct such inspections and investigations as are
2 necessary in order to determine the state of compliance with
3 the provisions of this part, part II of chapter 408, and
4 applicable adopted rules. ~~The right of inspection also~~
5 ~~extends to any program that the agency has reason to believe~~
6 ~~is offering or advertising itself as a hospice without a~~
7 ~~license, but no inspection may be made without the permission~~
8 ~~of the owner or person in charge thereof unless a warrant is~~
9 ~~first obtained from a circuit court authorizing such~~
10 ~~inspection. An application for a license or license renewal~~
11 ~~made pursuant to this part constitutes permission for an~~
12 ~~inspection of the hospice for which the license is sought in~~
13 ~~order to facilitate verification of the information submitted~~
14 ~~on or in connection with the application.~~

15 (4)(f) In accordance with part II of chapter 408, the
16 agency may impose an administrative fine for any violation of
17 the provisions of this part, part II of chapter 408, or
18 applicable rules.

19 Section 132. Section 400.606, Florida Statutes, is
20 amended to read:

21 400.606 License; application; renewal; conditional
22 license or permit; certificate of need.--

23 (1) ~~A license application must be filed on a form~~
24 ~~provided by the agency and must be accompanied by the~~
25 ~~appropriate license fee as well as satisfactory proof that the~~
26 ~~hospice is in compliance with this part and any rules adopted~~
27 ~~by the department and proof of financial ability to operate~~
28 ~~and conduct the hospice in accordance with the requirements of~~
29 ~~this part.~~ The initial application and change-of-ownership
30 application must be accompanied by a plan for the delivery of
31 home, residential, and homelike inpatient hospice services to

1 terminally ill persons and their families. Such plan must
2 contain, but need not be limited to:

3 (a) The estimated average number of terminally ill
4 persons to be served monthly.

5 (b) The geographic area in which hospice services will
6 be available.

7 (c) A listing of services which are or will be
8 provided, either directly by the applicant or through
9 contractual arrangements with existing providers.

10 (d) Provisions for the implementation of hospice home
11 care within 3 months after licensure.

12 (e) Provisions for the implementation of hospice
13 homelike inpatient care within 12 months after licensure.

14 (f) The number and disciplines of professional staff
15 to be employed.

16 (g) The name and qualifications of any existing or
17 potential contractee.

18 (h) A plan for attracting and training volunteers.

19 (i) The projected annual operating cost of the
20 hospice.

21 ~~(j) A statement of financial resources and personnel
22 available to the applicant to deliver hospice care.~~

23
24 If the applicant is licensed to operate an existing health
25 care provider, the application must be accompanied by a copy
26 of the most recent profit-loss statement and, if applicable,
27 the most recent licensure inspection report.

28 ~~(2) Each applicant must submit to the agency with its
29 application a description and explanation of any exclusions,
30 permanent suspensions, or terminations from the Medicaid or
31 Medicare programs of the owner, if an individual; of any~~

1 ~~officer or board member of the hospice, if the owner is a~~
2 ~~firm, corporation, partnership, or association; or of any~~
3 ~~person owning 5 percent or more of the hospice. Proof of~~
4 ~~compliance with disclosure of ownership and control interest~~
5 ~~requirements of the Medicaid or Medicare programs may be~~
6 ~~accepted in lieu of this submission.~~

7 (2)~~(3)~~ A license issued for the operation of a
8 hospice, unless sooner suspended or revoked, shall expire
9 automatically 1 year from the date of issuance. Sixty days
10 prior to the expiration date, a hospice wishing to renew its
11 license shall submit an application for renewal to the agency
12 on forms furnished by the agency. The agency shall renew the
13 license if the applicant has first met the requirements
14 established under this part and all applicable rules and has
15 provided the information described under this section in
16 addition to the application. However, The application for
17 license renewal shall be accompanied by an update of the plan
18 for delivery of hospice care only if information contained in
19 the plan submitted pursuant to subsection (1) is no longer
20 applicable.

21 ~~(4)~~ A hospice against which a revocation or suspension
22 proceeding is pending at the time of license renewal may be
23 issued a conditional license by the agency effective until
24 final disposition of such proceeding. If judicial relief is
25 sought from the final agency action, the court having
26 jurisdiction may issue a conditional permit for the duration
27 of the judicial proceeding.

28 (3)~~(5)~~ The agency shall not issue a license to a
29 hospice that fails to receive a certificate of need under the
30 provisions of ss. 408.031-408.045. A licensed hospice is a
31 health care facility as that term is used in s. 408.039(5) and

1 is entitled to initiate or intervene in an administrative
2 hearing.

3 ~~(4)(6)~~ A freestanding hospice facility that is
4 primarily engaged in providing inpatient and related services
5 and that is not otherwise licensed as a health care facility
6 shall be required to obtain a certificate of need. However, a
7 freestanding hospice facility with six or fewer beds shall not
8 be required to comply with institutional standards such as,
9 but not limited to, standards requiring sprinkler systems,
10 emergency electrical systems, or special lavatory devices.

11 Section 133. Section 400.6065, Florida Statutes, is
12 amended to read:

13 400.6065 Background screening.--

14 ~~(1) Upon receipt of a completed application under s.~~
15 ~~400.606, the agency shall require level 2 background screening~~
16 ~~on each of the following persons, who shall be considered~~
17 ~~employees for the purposes of conducting screening under~~
18 ~~chapter 435:~~

19 ~~(a) The hospice administrator and financial officer.~~

20 ~~(b) An officer or board member if the hospice is a~~
21 ~~firm, corporation, partnership, or association, or any person~~
22 ~~owning 5 percent or more of the hospice if the agency has~~
23 ~~probable cause to believe that such officer, board member, or~~
24 ~~owner has been convicted of any offense prohibited by s.~~
25 ~~435.04. For each officer, board member, or person owning 5~~
26 ~~percent or more who has been convicted of any such offense,~~
27 ~~the hospice shall submit to the agency a description and~~
28 ~~explanation of the conviction at the time of license~~
29 ~~application. This paragraph does not apply to a board member~~
30 ~~of a not for profit corporation or organization if the board~~
31 ~~member serves solely in a voluntary capacity, does not~~

1 ~~regularly take part in the day to day operational decisions of~~
2 ~~the corporation or organization, receives no remuneration for~~
3 ~~his or her services, and has no financial interest and has no~~
4 ~~family members with a financial interest in the corporation or~~
5 ~~organization, provided that the board member and the~~
6 ~~corporation or organization submit a statement affirming that~~
7 ~~the board member's relationship to the corporation or~~
8 ~~organization satisfies the requirements of this paragraph.~~

9 ~~(2) Proof of compliance with level 2 screening~~
10 ~~standards which has been submitted within the previous 5 years~~
11 ~~to meet any facility or professional licensure requirements of~~
12 ~~the agency or the Department of Health satisfies the~~
13 ~~requirements of this section.~~

14 ~~(3) The agency may grant a provisional license to a~~
15 ~~hospice applying for an initial license when each individual~~
16 ~~required by this section to undergo screening has completed~~
17 ~~the Department of Law Enforcement background check, but has~~
18 ~~not yet received results from the Federal Bureau of~~
19 ~~Investigation.~~

20 (1)(4) The agency shall require employment or
21 contractor screening as provided in chapter 435, using the
22 level 1 standards for screening set forth in that chapter, for
23 hospice personnel.

24 (2)(5) The agency may grant exemptions from
25 disqualification from employment under this section as
26 provided in s. 435.07.

27 ~~(6) The administration of each hospice must sign an~~
28 ~~affidavit annually, under penalty of perjury, stating that all~~
29 ~~personnel employed or contracted with on or after October 1,~~
30 ~~1998, who provide hospice services in a facility, or who enter~~

31

1 ~~the home of a patient in their service capacity, have been~~
2 ~~screened.~~

3 (3)~~(7)~~ Proof of compliance with the screening
4 requirements of chapter 435 shall be accepted in lieu of the
5 requirements of this section if the person has been
6 continuously employed or registered without a breach in
7 service that exceeds 180 days, the proof of compliance is not
8 more than 2 years old, and the person has been screened, at
9 the discretion of the hospice.

10 (4)~~(8)~~(a) It is a misdemeanor of the first degree,
11 punishable under s. 775.082 or s. 775.083, for any person
12 willfully, knowingly, or intentionally to:

13 1. Fail, by false statement, misrepresentation,
14 impersonation, or other fraudulent means, to disclose in any
15 application for voluntary or paid employment a material fact
16 used in making a determination as to such person's
17 qualifications to be employed or contracted with under this
18 section;

19 ~~2. Operate or attempt to operate an entity licensed~~
20 ~~under this part with persons who do not meet the minimum~~
21 ~~standards for good moral character as contained in this~~
22 ~~section; or~~

23 2.3~~.~~ Use information from the criminal records
24 obtained under this section for any purpose other than
25 screening as specified in this section, or release such
26 information to any other person for any purpose other than
27 screening under this section.

28 (b) It is a felony of the third degree, punishable
29 under s. 775.082, s. 775.083, or s. 775.084, for any person
30 willfully, knowingly, or intentionally to use information from
31 the juvenile records of a person obtained under this section

1 for any purpose other than screening for employment under this
2 section.

3 Section 134. Section 400.607, Florida Statutes, is
4 amended to read:

5 400.607 Denial, ~~suspension~~, or revocation of license;
6 imposition of administrative fine; grounds; injunctions.--

7 (1) The agency may deny or, revoke, ~~or suspend~~ a
8 license, impose a moratorium, or impose an administrative
9 fine, which may not exceed \$5,000 per violation, for the
10 violation of any provision of this part, part II of chapter
11 408, or applicable rules in the manner provided in chapter
12 120.

13 (2) Any of the following actions by a licensed hospice
14 or any of its employees shall be grounds for action by the
15 agency against a hospice:

16 (a) A violation of the provisions of this part or
17 applicable rules.

18 (b) An intentional or negligent act materially
19 affecting the health or safety of a patient.

20 ~~(3) The agency may deny or revoke a license upon a~~
21 ~~determination that:~~

22 ~~(a) Persons subject to level 2 background screening~~
23 ~~under s. 400.6065 do not meet the screening standards of s.~~
24 ~~435.04, and exemptions from disqualification have not been~~
25 ~~provided by the agency.~~

26 ~~(b) An officer, board member, or person owning 5~~
27 ~~percent or more of the hospice has been excluded, permanently~~
28 ~~suspended, or terminated from the Medicare or Medicaid~~
29 ~~programs.~~

30 ~~(3)(4)~~ If, 3 months after the date of obtaining a
31 license, or at any time thereafter, a hospice does not have in

1 operation the home-care component of hospice care, the agency
2 shall immediately revoke the license of such hospice.

3 ~~(4)(5)~~ If, 12 months after the date of obtaining a
4 license pursuant to s. 400.606, or at any time thereafter, a
5 hospice does not have in operation the inpatient components of
6 hospice care, the agency shall immediately revoke the license
7 of such hospice.

8 ~~(6) The agency may institute a civil action in a court
9 of competent jurisdiction to seek injunctive relief to enforce
10 compliance with this part or any rule adopted pursuant to this
11 part.~~

12 ~~(5)(7)~~ The remedies set forth in this section are
13 independent of and cumulative to other remedies provided by
14 law.

15 Section 135. Subsection (8) of section 400.6095,
16 Florida Statutes, is amended to read:

17 400.6095 Patient admission; assessment; plan of care;
18 discharge; death.--

19 (8) The hospice care team may withhold or withdraw
20 cardiopulmonary resuscitation if presented with an order not
21 to resuscitate executed pursuant to s. 401.45. The agency
22 ~~department~~ shall adopt rules providing for the implementation
23 of such orders. Hospice staff shall not be subject to criminal
24 prosecution or civil liability, nor be considered to have
25 engaged in negligent or unprofessional conduct, for
26 withholding or withdrawing cardiopulmonary resuscitation
27 pursuant to such an order and applicable rules ~~adopted by the~~
28 ~~department~~. The absence of an order to resuscitate executed
29 pursuant to s. 401.45 does not preclude a physician from
30 withholding or withdrawing cardiopulmonary resuscitation as
31 otherwise permitted by law.

1 Section 136. Subsection (5) of section 400.617,
2 Florida Statutes, is amended to read:

3 400.617 Legislative intent; purpose.--

4 (5) Rules of the agency ~~department~~ relating to adult
5 family-care homes shall be as minimal and flexible as possible
6 to ensure the protection of residents while minimizing the
7 obstacles that could inhibit the establishment of adult
8 family-care homes.

9 Section 137. Section 400.619, Florida Statutes, is
10 amended to read:

11 400.619 Licensure ~~application and renewal~~.--

12 (1) 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(7), (8), (9), and (10). Each person
19 who intends to be an adult family care home provider must
20 apply for a license from the agency at least 90 days before
21 the applicant intends to operate the adult family care home.

22 (2) A person who intends to be an adult family-care
23 home provider must own or rent the adult family-care home that
24 is to be licensed and reside therein.

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 \$200 per biennium. The agency shall
29 notify a licensee at least 120 days before the expiration date
30 that license renewal is required to continue operation. The
31 notification must be provided electronically or by mail

1 ~~delivery. Application for a license or annual license renewal~~
2 ~~must be made on a form provided by the agency, signed under~~
3 ~~oath, and must be accompanied by a licensing fee of \$100 per~~
4 ~~year.~~

5 (4) Upon receipt of a completed license application or
6 license renewal, and the fee, the agency shall initiate a
7 level 1 background screening as provided under chapter 435 on
8 the adult family-care home provider, the designated relief
9 person, all adult household members, and all staff members.
10 The applicant or licensee is responsible for paying the fees
11 associated with obtaining the required screening. The agency
12 shall conduct an onsite visit to the home that is to be
13 licensed.

14 (a) Proof of compliance with level 1 screening
15 standards which has been submitted within the previous 5 years
16 to meet any facility or professional licensure requirements of
17 the agency or the Department of Health satisfies the
18 requirements of this subsection. Such proof must be
19 accompanied, under penalty of perjury, by a copy of the
20 person's current professional license and an affidavit of
21 current compliance with the background screening requirements.

22 (b) The person required to be screened must have been
23 continuously employed in the same type of occupation for which
24 the person is seeking employment without a breach in service
25 that exceeds 180 days, and proof of compliance with the level
26 1 screening requirement which is no more than 2 years old must
27 be provided. Proof of compliance shall be provided directly
28 from one employer or contractor to another, and not from the
29 person screened. Upon request, a copy of screening results
30 shall be provided to the person screened by the employer
31 retaining documentation of the screening.

1 ~~(5) The application must be accompanied by a~~
2 ~~description and explanation of any exclusions, permanent~~
3 ~~suspensions, or terminations of the applicant from~~
4 ~~participation in the Medicaid or Medicare programs or any~~
5 ~~other governmental health care or health insurance program.~~

6 (5)(6) Unless the adult family-care home is a
7 community residential home subject to chapter 419, the
8 applicant must provide documentation, signed by the
9 appropriate governmental official, that the home has met local
10 zoning requirements for the location for which the license is
11 sought.

12 (6)(7) Access to a licensed adult family-care home
13 must be provided at reasonable times for the appropriate
14 officials of the department, the Department of Health, the
15 Department of Children and Family Services, the agency, and
16 the State Fire Marshal, who are responsible for the
17 development and maintenance of fire, health, sanitary, and
18 safety standards, to inspect the facility to assure compliance
19 with these standards. In addition, access to a licensed adult
20 family-care home must be provided at reasonable times for the
21 local long-term care ombudsman council.

22 ~~(8) A license is effective for 1 year after the date~~
23 ~~of issuance unless revoked sooner. Each license must state~~
24 ~~the name of the provider, the address of the home to which the~~
25 ~~license applies, and the maximum number of residents of the~~
26 ~~home. Failure to timely file a license renewal application~~
27 ~~shall result in a late fee equal to 50 percent of the license~~
28 ~~fee.~~

29 ~~(9) A license is not transferable or applicable to any~~
30 ~~location or person other than the location and person~~
31 ~~indicated on the license.~~

1 ~~(7)~~~~(10)~~ The licensed maximum capacity of each adult
2 family-care home is based on the service needs of the
3 residents and the capability of the provider to meet the needs
4 of the residents. Any relative who lives in the adult
5 family-care home and who is a disabled adult or frail elder
6 must be included in that limitation.

7 ~~(8)~~~~(11)~~ Each adult family-care home must designate at
8 least one licensed space for a resident receiving optional
9 state supplementation. The Department of Children and Family
10 Services shall specify by rule the procedures to be followed
11 for referring residents who receive optional state
12 supplementation to adult family-care homes. Those homes
13 licensed as adult foster homes or assisted living facilities
14 prior to January 1, 1994, that convert to adult family-care
15 homes, are exempt from this requirement.

16 ~~(9)~~~~(12)~~ The agency may issue a conditional license to
17 a provider for the purpose of bringing the adult family-care
18 home into compliance with licensure requirements. A
19 conditional license must be limited to a specific period, not
20 exceeding 6 months. The agency ~~department~~ shall, by rule,
21 establish criteria for issuing conditional licenses.

22 ~~(13)~~ ~~All moneys collected under this section 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 ~~(10)~~~~(14)~~ The agency ~~department~~ may adopt rules to
28 establish procedures, identify forms, specify documentation,
29 and clarify terms, as necessary, to administer this section
30 and part II of chapter 408.

31

1 Section 138. Section 400.6194, Florida Statutes, is
2 amended to read:

3 400.6194 Denial or, revocation, ~~or suspension~~ of a
4 license.--In addition to the requirements of part II of
5 chapter 408, the agency may deny, ~~suspend~~, or revoke a license
6 for any of the following reasons:

7 (1) Failure of any of the persons required to undergo
8 background screening under s. 400.619 to meet the level 1
9 screening standards of s. 435.03, unless an exemption from
10 disqualification has been provided by the agency.

11 ~~(2) An intentional or negligent act materially~~
12 ~~affecting the health, safety, or welfare of the adult~~
13 ~~family care home residents.~~

14 ~~(3) Submission of fraudulent information or omission~~
15 ~~of any material fact on a license application or any other~~
16 ~~document required by the agency.~~

17 ~~(4) Failure to pay an administrative fine assessed~~
18 ~~under this part.~~

19 ~~(5) A violation of this part or adopted rules which~~
20 ~~results in conditions or practices that directly threaten the~~
21 ~~physical or emotional health, safety, or welfare of residents.~~

22 (2)(6) Failure to correct cited fire code violations
23 that threaten the health, safety, or welfare of residents.

24 ~~(7) Failure to submit a completed initial license~~
25 ~~application or to complete an application for license renewal~~
26 ~~within the specified timeframes.~~

27 ~~(8) Exclusion, permanent suspension, or termination of~~
28 ~~the provider from the Medicare or Medicaid program.~~

29 Section 139. Section 400.6196, Florida Statutes, is
30 amended to read:

31

1 400.6196 Classification of deficiencies;

2 administrative fines ~~Violations; penalties.--~~

3 (1) In accordance with part II of chapter 408, and in
4 addition to any other liability or penalty provided by law,
5 the agency may impose an administrative fine against a civil
6 ~~penalty on~~ a provider according to the following
7 classification for a violation of any provision of this part,
8 part II of chapter 408, or applicable rules:

9 (a) Class I violations are those conditions or
10 practices related to the operation and maintenance of an adult
11 family-care home or to the care of residents which the agency
12 determines present an imminent danger to the residents or
13 guests of the facility or a substantial probability that death
14 or serious physical or emotional harm would result therefrom.
15 The condition or practice that constitutes a class I violation
16 must be abated or eliminated within 24 hours, unless a fixed
17 period, as determined by the agency, is required for
18 correction. A class I deficiency is subject to an
19 administrative fine in an amount not less than \$500 and not
20 exceeding \$1,000 for each violation. A fine may be levied
21 notwithstanding the correction of the deficiency.

22 (b) Class II violations are those conditions or
23 practices related to the operation and maintenance of an adult
24 family-care home or to the care of residents which the agency
25 determines directly threaten the physical or emotional health,
26 safety, or security of the residents, other than class I
27 violations. A class II violation is subject to an
28 administrative fine in an amount not less than \$250 and not
29 exceeding \$500 for each violation. A citation for a class II
30 violation must specify the time within which the violation is
31 required to be corrected. If a class II violation is corrected

1 within the time specified, no civil penalty shall be imposed,
2 unless it is a repeated offense.

3 (c) Class III violations are those conditions or
4 practices related to the operation and maintenance of an adult
5 family-care home or to the care of residents which the agency
6 determines indirectly or potentially threaten the physical or
7 emotional health, safety, or security of residents, other than
8 class I or class II violations. A class III violation is
9 subject to an administrative fine in an amount not less than
10 \$100 and not exceeding \$250 for each violation. A citation for
11 a class III violation shall specify the time within which the
12 violation is required to be corrected. If a class III
13 violation is corrected within the time specified, no civil
14 penalty shall be imposed, unless it is a repeated offense.

15 (d) Class IV violations are those conditions or
16 occurrences related to the operation and maintenance of an
17 adult family-care home, or related to the required reports,
18 forms, or documents, which do not have the potential of
19 negatively affecting the residents. A provider that does not
20 correct a class IV violation within the time limit specified
21 by the agency is subject to an administrative fine in an
22 amount not less than \$50 and not exceeding \$100 for each
23 violation. Any class IV violation that is corrected during the
24 time the agency survey is conducted will be identified as an
25 agency finding and not as a violation.

26 (2) The agency may impose an administrative fine for
27 violations which do not qualify as class I, class II, class
28 III, or class IV violations. The amount of the fine shall not
29 exceed \$250 for each violation or \$2,000 in the aggregate.
30 Unclassified violations include:

31 (a) Violating any term or condition of a license.

1 (b) Violating any provision of ~~rule adopted under~~ this
2 part, part II of chapter 408, or applicable rules.

3 (c) 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 adult family-care home residents.

7 (d) Exceeding licensed capacity.

8 (e) Providing services beyond the scope of the
9 license.

10 (f) Violating a moratorium.

11 ~~(3) Each day during which a violation occurs~~
12 ~~constitutes a separate offense.~~

13 ~~(3)(4)~~ In determining whether a penalty is to be
14 imposed, and in fixing the amount of any penalty to be
15 imposed, the agency must consider:

16 (a) The gravity of the violation.

17 (b) Actions taken by the provider to correct a
18 violation.

19 (c) Any previous violation by the provider.

20 (d) The financial benefit to the provider of
21 committing or continuing the violation.

22 ~~(4)(5)~~ As an alternative to or in conjunction with an
23 administrative action against a provider, the agency may
24 request a plan of corrective action that demonstrates a good
25 faith effort to remedy each violation by a specific date,
26 subject to the approval of the agency.

27 ~~(5)(6)~~ The department shall set forth, by rule, notice
28 requirements and procedures for correction of deficiencies.

29 ~~(7) Civil penalties paid by a provider must be~~
30 ~~deposited into the Department of Elderly Affairs~~
31 ~~Administrative Trust Fund and used to offset the expenses of~~

1 ~~departmental training and education for adult family care home~~
2 ~~providers.~~

3 ~~(8) The agency may impose an immediate moratorium on~~
4 ~~admissions to any adult family care home if the agency finds~~
5 ~~that a condition in the home presents a threat to the health,~~
6 ~~safety, or welfare of its residents. The department may by~~
7 ~~rule establish facility conditions that constitute grounds for~~
8 ~~imposing a moratorium and establish procedures for imposing~~
9 ~~and lifting a moratorium.~~

10 Section 140. Section 400.621, Florida Statutes, is
11 amended to read:

12 400.621 Rules and standards relating to adult
13 family-care homes.--

14 (1) The agency ~~department~~, in consultation with the
15 Department of Health, the Department of Children and Family
16 Services, and the department ~~agency~~ shall, by rule, establish
17 minimum standards to ensure the health, safety, and well-being
18 of each resident in the adult family-care home pursuant to
19 this part and part II of chapter 408. The rules must address:

20 (a) Requirements for the physical site of the facility
21 and facility maintenance.

22 (b) Services that must be provided to all residents of
23 an adult family-care home and standards for such services,
24 which must include, but need not be limited to:

- 25 1. Room and board.
- 26 2. Assistance necessary to perform the activities of
27 daily living.
- 28 3. Assistance necessary to administer medication.
- 29 4. Supervision of residents.
- 30 5. Health monitoring.
- 31 6. Social and leisure activities.

1 (c) Standards and procedures for license application
2 and annual license renewal, advertising, proper management of
3 each resident's funds and personal property and personal
4 affairs, financial ability to operate, medication management,
5 inspections, complaint investigations, and facility, staff,
6 and resident records.

7 (d) Qualifications, training, standards, and
8 responsibilities for providers and staff.

9 (e) Compliance with chapter 419, relating to community
10 residential homes.

11 (f) Criteria and procedures for determining the
12 appropriateness of a resident's placement and continued
13 residency in an adult family-care home. A resident who
14 requires 24-hour nursing supervision may not be retained in an
15 adult family-care home unless such resident is an enrolled
16 hospice patient and the resident's continued residency is
17 mutually agreeable to the resident and the provider.

18 (g) Procedures for providing notice and assuring the
19 least possible disruption of residents' lives when residents
20 are relocated, an adult family-care home is closed, or the
21 ownership of an adult family-care home is transferred.

22 (h) Procedures to protect the residents' rights as
23 provided in s. 400.628.

24 (i) Procedures to promote the growth of adult
25 family-care homes as a component of a long-term care system.

26 (j) Procedures to promote the goal of aging in place
27 for residents of adult family-care homes.

28 (2) The agency ~~department~~ shall by rule provide
29 minimum standards and procedures for emergencies. Pursuant to
30 s. 633.022, the State Fire Marshal, in consultation with the
31

1 department and the agency, shall adopt uniform firesafety
2 standards for adult family-care homes.

3 (3) The agency ~~department~~ shall adopt rules providing
4 for the implementation of orders not to resuscitate. The
5 provider may withhold or withdraw cardiopulmonary
6 resuscitation if presented with an order not to resuscitate
7 executed pursuant to s. 401.45. The provider shall not be
8 subject to criminal prosecution or civil liability, nor be
9 considered to have engaged in negligent or unprofessional
10 conduct, for withholding or withdrawing cardiopulmonary
11 resuscitation pursuant to such an order and applicable rules
12 ~~adopted by the department.~~

13 ~~(4) The provider of any adult family care home that is~~
14 ~~in operation at the time any rules are adopted or amended~~
15 ~~under this part may be given a reasonable time, not exceeding~~
16 ~~6 months, within which to comply with the new or revised rules~~
17 ~~and standards.~~

18 Section 141. Subsection (3) of section 400.6211,
19 Florida Statutes, is amended to read:

20 400.6211 Training and education programs.--

21 (3) Effective January 1, 2004, providers must complete
22 the training and education program within a reasonable time
23 determined by the agency ~~department~~. Failure to complete the
24 training and education program within the time set by the
25 agency ~~department~~ is a violation of this part and subjects the
26 provider to revocation of the license.

27 Section 142. Section 400.622, Florida Statutes, is
28 repealed.

29 Section 143. Subsection (2) of section 400.625,
30 Florida Statutes, is amended to read:

31 400.625 Residency agreements.--

1 (2) Each residency agreement must specify the personal
2 care and accommodations to be provided by the adult
3 family-care home, the rates or charges, a requirement of at
4 least 30 days' notice before a rate increase, and any other
5 provisions required by rule of the agency ~~department~~.

6 Section 144. Section 400.801, Florida Statutes, is
7 amended to read:

8 400.801 Homes for special services.--

9 (1) As used in this section, the term:

10 (a) "Agency" means the "Agency for Health Care
11 Administration."

12 (b) "Home for special services" means a site where
13 specialized health care services are provided, including
14 personal and custodial care, but not continuous nursing
15 services.

16 (2) The requirements of part II of chapter 408 apply
17 to the provision of services that necessitate licensure
18 pursuant to this section 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
21 section. However, an applicant for licensure is exempt from
22 the provisions of s. 408.810(7), (8), (9), and (10). A person
23 must obtain a license from the agency to operate a home for
24 special services. A license is valid for 1 year.

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 section and part II of chapter 408. The
28 amount of the fee shall be established by rule and may not be
29 more than \$2,000 per biennium. The application for a license
30 under this section must be made on a form provided by the
31

1 ~~agency. A nonrefundable license fee of not more than \$1,000~~
2 ~~must be submitted with the license application.~~

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

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

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

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

28 ~~(d) A provisional license may be granted to an~~
29 ~~applicant when each individual required by this section to~~
30 ~~undergo background screening has met the standards for the~~
31 ~~Department of Law Enforcement background check, but the agency~~

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

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

26 ~~(f) Each applicant must submit to the agency a~~
27 ~~description and explanation of any conviction of an offense~~
28 ~~prohibited under the level 2 standards of chapter 435 by a~~
29 ~~member of the board of directors of the applicant, its~~
30 ~~officers, or any individual owning 5 percent or more of the~~
31 ~~applicant. This requirement does not apply to a director of a~~

1 ~~not for profit corporation or organization if the director~~
2 ~~serves solely in a voluntary capacity for the corporation or~~
3 ~~organization, does not regularly take part in the day to day~~
4 ~~operational decisions of the corporation or organization,~~
5 ~~receives no remuneration for his or her services on the~~
6 ~~corporation or organization's board of directors, and has no~~
7 ~~financial interest and has no family members with a financial~~
8 ~~interest in the corporation or organization, provided that the~~
9 ~~director and the not for profit corporation or organization~~
10 ~~include in the application a statement affirming that the~~
11 ~~director's relationship to the corporation satisfies the~~
12 ~~requirements of this paragraph.~~

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

20 ~~(h) The agency may deny or revoke licensure if the~~
21 ~~applicant:~~

22 ~~1. Has falsely represented a material fact in the~~
23 ~~application required by paragraph (c) or paragraph (f), or has~~
24 ~~omitted any material fact from the application required by~~
25 ~~paragraph (c) or paragraph (f); or~~

26 ~~2. Has had prior action taken against the applicant~~
27 ~~under the Medicaid or Medicare program as set forth in~~
28 ~~paragraph (c).~~

29 ~~(i) An application for license renewal must contain~~
30 ~~the information required under paragraphs (c) and (f).~~

31

1 ~~(5) Application for license renewal must be submitted~~
2 ~~90 days before the expiration of the license.~~

3 ~~(6) A change of ownership or control of a home for~~
4 ~~special services must be reported to the agency in writing at~~
5 ~~least 60 days before the change is scheduled to take effect.~~

6 ~~(4)(7)~~ The agency may ~~shall~~ adopt rules for
7 implementing and enforcing this section and part II of chapter
8 408.

9 ~~(8)(a) It is unlawful for any person to establish,~~
10 ~~conduct, manage, or operate a home for special services~~
11 ~~without obtaining a license from the agency.~~

12 ~~(b) It is unlawful for any person to offer or~~
13 ~~advertise to the public, in any medium whatever, specialized~~
14 ~~health care services without obtaining a license from the~~
15 ~~agency.~~

16 ~~(c) It is unlawful for a holder of a license issued~~
17 ~~under this section to advertise or represent to the public~~
18 ~~that it holds a license for a type of facility other than the~~
19 ~~facility for which its license is issued.~~

20 ~~(5)(9)(a)~~ In accordance with part II of chapter 408, a
21 violation of any provision of this section, part II of chapter
22 408, or applicable rules adopted by the agency for
23 implementing this section is punishable by payment of an
24 administrative fine not to exceed \$5,000.

25 ~~(b) A violation of subsection (8) or rules adopted~~
26 ~~under that subsection is a misdemeanor of the first degree,~~
27 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
28 ~~of continuing violation is a separate offense.~~

29 Section 145. Section 400.805, Florida Statutes, is
30 amended to read:

31 400.805 Transitional living facilities.--

1 (1) As used in this section, the term:

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

4 (b) "Department" means the Department of Health.

5 (c) "Transitional living facility" means a site where
6 specialized health care services are provided, including, but
7 not limited to, rehabilitative services, community reentry
8 training, aids for independent living, and counseling to
9 spinal-cord-injured persons and head-injured persons. This
10 term does not include a hospital licensed under chapter 395 or
11 any federally operated hospital or facility.

12 (2)(a) The requirements of part II of chapter 408
13 apply 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. However, an applicant for licensure is exempt from
18 the provisions of s. 408.810(7), (8), (9), and (10). A person
19 must obtain a license from the agency to operate a
20 transitional living facility. A license issued under this
21 section is valid for 1 year.

22 (b) In accordance with s. 408.805, an applicant or
23 licensee shall pay a fee for each license application
24 submitted under this section and part II of chapter 408. The
25 fee shall be comprised of a license fee of \$4,000 per biennium
26 and a fee of \$78.50 for each bed per biennium, unless modified
27 by rule. The application for a license must be made on a form
28 provided by the agency. A nonrefundable license fee of \$2,000
29 and a fee of up to \$39.25 per bed must be submitted with the
30 license application.

31

1 (c) The agency may not issue a license to an applicant
2 until the agency receives notice from the department as
3 provided in paragraph (6)(b).

4 ~~(3) Each applicant for licensure must comply with the~~
5 ~~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 2 standards for screening set forth~~
9 ~~in chapter 435, of the managing employee, or other similarly~~
10 ~~titled individual who is responsible for the daily operation~~
11 ~~of the facility, and of the financial officer, or other~~
12 ~~similarly titled individual who is responsible for the~~
13 ~~financial operation of the facility, including billings for~~
14 ~~client care and services. The applicant must comply with the~~
15 ~~procedures for level 2 background screening as set forth in~~
16 ~~chapter 435.~~

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

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

28 ~~(d) A provisional license may be granted to an~~
29 ~~applicant when each individual required by this section to~~
30 ~~undergo background screening has met the standards for the~~
31 ~~Department of Law Enforcement background check, but the agency~~

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

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

26 ~~(f) Each applicant must submit to the agency a~~
27 ~~description and explanation of any conviction of an offense~~
28 ~~prohibited under the level 2 standards of chapter 435 by a~~
29 ~~member of the board of directors of the applicant, its~~
30 ~~officers, or any individual owning 5 percent or more of the~~
31 ~~applicant. This requirement does not apply to a director of a~~

1 ~~not for profit corporation or organization if the director~~
2 ~~serves solely in a voluntary capacity for the corporation or~~
3 ~~organization, does not regularly take part in the day to day~~
4 ~~operational decisions of the corporation or organization,~~
5 ~~receives no remuneration for his or her services on the~~
6 ~~corporation or organization's board of directors, and has no~~
7 ~~financial interest and has no family members with a financial~~
8 ~~interest in the corporation or organization, provided that the~~
9 ~~director and the not for profit corporation or organization~~
10 ~~include in the application a statement affirming that the~~
11 ~~director's relationship to the corporation satisfies the~~
12 ~~requirements of this paragraph.~~

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

20 ~~(h) The agency may deny or revoke licensure if the~~
21 ~~applicant:~~

22 ~~1. Has falsely represented a material fact in the~~
23 ~~application required by paragraph (c) or paragraph (f), or has~~
24 ~~omitted any material fact from the application required by~~
25 ~~paragraph (c) or paragraph (f); or~~

26 ~~2. Has had prior action taken against the applicant~~
27 ~~under the Medicaid or Medicare program as set forth in~~
28 ~~paragraph (c).~~

29 ~~(i) An application for license renewal must contain~~
30 ~~the information required under paragraphs (c) and (f).~~

31

1 ~~(4) An application for renewal of license must be~~
2 ~~submitted 90 days before the expiration of the license. Upon~~
3 ~~renewal of licensure, each applicant must submit to the~~
4 ~~agency, under penalty of perjury, an affidavit as set forth in~~
5 ~~paragraph (3)(d).~~

6 ~~(5) A change of ownership or control of a transitional~~
7 ~~living facility must be reported to the agency in writing at~~
8 ~~least 60 days before the change is scheduled to take effect.~~

9 (3)(6)(a) The agency shall adopt rules in consultation
10 with the department governing the physical plant of
11 transitional living facilities and the fiscal management of
12 transitional living facilities.

13 (b) The department shall adopt rules in consultation
14 with the agency governing the services provided to clients of
15 transitional living facilities. The department shall enforce
16 all requirements for providing services to the facility's
17 clients. The department must notify the agency when it
18 determines that an applicant for licensure meets the service
19 requirements adopted by the department.

20 (c) The agency and the department shall enforce
21 requirements under this section, as such requirements relate
22 to them respectively, and their respective adopted rules.

23 ~~(7)(a) It is unlawful for any person to establish,~~
24 ~~conduct, manage, or operate a transitional living facility~~
25 ~~without obtaining a license from the agency.~~

26 ~~(b) It is unlawful for any person to offer or~~
27 ~~advertise to the public, in any medium whatever, services or~~
28 ~~care defined in paragraph (1)(c) without obtaining a license~~
29 ~~from the agency.~~

30 ~~(c) It is unlawful for a holder of a license issued~~
31 ~~under this section to advertise or represent to the public~~

1 ~~that it holds a license for a type of facility other than the~~
2 ~~facility for which its license is issued.~~

3 (4)~~(8)~~ Any designated officer or employee of the
4 agency, of the state, or of the local fire marshal may enter
5 unannounced upon and into the premises of any facility
6 licensed under this section in order to determine the state of
7 compliance with this section and the rules or standards in
8 force under this section. The right of entry and inspection
9 also extends to any premises that the agency has reason to
10 believe are being operated or maintained as a facility without
11 a license; but such an entry or inspection may not be made
12 without the permission of the owner or person in charge of the
13 facility unless a warrant that authorizes the entry is first
14 obtained from the circuit court. The warrant requirement
15 extends only to a facility that the agency has reason to
16 believe is being operated or maintained as a facility without
17 a license. An application for a license or renewal thereof
18 which is made under this section constitutes permission for,
19 and acquiescence in, any entry or inspection of the premises
20 for which the license is sought, in order to facilitate
21 verification of the information submitted on or in connection
22 with the application; to discover, investigate, and determine
23 the existence of abuse or neglect; or to elicit, receive,
24 respond to, and resolve complaints. A current valid license
25 constitutes unconditional permission for, and acquiescence in,
26 any entry or inspection of the premises by authorized
27 personnel. The agency retains the right of entry and
28 inspection of facilities that have had a license revoked or
29 suspended within the previous 24 months, to ensure that the
30 facility is not operating unlawfully. However, before the
31 facility is entered, a statement of probable cause must be

1 filed with the director of the agency, who must approve or
2 disapprove the action within 48 hours. Probable cause
3 includes, but is not limited to, evidence that the facility
4 holds itself out to the public as a provider of personal
5 assistance services, or the receipt by the advisory council on
6 brain and spinal cord injuries of a complaint about the
7 facility.

8 (5)~~(9)~~ The agency may institute injunctive proceedings
9 in a court of competent jurisdiction for temporary or
10 permanent relief to:

11 (a) Enforce this section or any minimum standard,
12 rule, or order issued pursuant thereto if the agency's effort
13 to correct a violation through administrative fines has failed
14 or when the violation materially affects the health, safety,
15 or welfare of residents; or

16 (b) Terminate the operation of a facility if a
17 violation of this section or of any standard or rule adopted
18 pursuant thereto exists which materially affects the health,
19 safety, or welfare of residents.

20
21 The Legislature recognizes that, in some instances, action is
22 necessary to protect residents of facilities from immediately
23 life-threatening situations. If it appears by competent
24 evidence or a sworn, substantiated affidavit that a temporary
25 injunction should issue, the court, pending the determination
26 on final hearing, shall enjoin operation of the facility.

27 ~~(10) The agency may impose an immediate moratorium on~~
28 ~~admissions to a facility when the agency determines that any~~
29 ~~condition in the facility presents a threat to the health,~~
30 ~~safety, or welfare of the residents in the facility. If a~~
31 ~~facility's license is denied, revoked, or suspended, the~~

1 ~~facility may be subject to the immediate imposition of a~~
2 ~~moratorium on admissions to run concurrently with licensure~~
3 ~~denial, revocation, or suspension.~~

4 (6)(11)(a) In accordance with part II of chapter 408,
5 a violation of any provision of this section, part II of
6 chapter 408, or applicable rules ~~adopted by the agency or~~
7 ~~department under this section~~ is punishable by payment of an
8 administrative or a civil penalty fine not to exceed \$5,000.

9 ~~(b) A violation of subsection (7) or rules adopted~~
10 ~~under that subsection is a misdemeanor of the first degree,~~
11 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
12 ~~of a continuing violation is a separate offense.~~

13 Section 146. Subsection (4) of section 400.902,
14 Florida Statutes, is amended to read:

15 400.902 Definitions.--As used in this part, the term:

16 (4) "Owner or operator" means a licensee ~~any~~
17 ~~individual who has general administrative charge of a PPEC~~
18 ~~center.~~

19 Section 147. Subsection (3) is added to section
20 400.903, Florida Statutes, to read:

21 400.903 PPEC centers to be licensed; exemptions.--

22 (3) The requirements of part II of chapter 408 apply
23 to the provision of services that necessitate licensure
24 pursuant to this part and part II of chapter 408 and to
25 entities licensed by or applying for such licensure from the
26 Agency for Health Care Administration pursuant to this part.
27 However, an applicant for licensure is exempt from the
28 provisions of s. 408.810(10).

29 Section 148. Section 400.905, Florida Statutes, is
30 amended to read:

31 400.905 License required; fee; exemption; display.--

1 ~~(1)(a) It is unlawful to operate or maintain a PPEC~~
2 ~~center without first obtaining from the agency a license~~
3 ~~authorizing such operation. The agency is responsible for~~
4 ~~licensing PPEC centers in accordance with the provisions of~~
5 ~~this part.~~

6 ~~(b) Any person who violates paragraph (a) is guilty of~~
7 ~~a felony of the third degree, punishable as provided in s.~~
8 ~~775.082, s. 775.083, or s. 775.084.~~

9 ~~(1)(2)~~ Separate licenses are required for PPEC centers
10 maintained on separate premises, even though they are operated
11 under the same management. Separate licenses are not required
12 for separate buildings on the same grounds.

13 ~~(2)(3)~~ In accordance with s. 408.805, an applicant or
14 licensee shall pay a fee for each license application
15 submitted under this part and part II of chapter 408. The
16 amount of the fee shall be established by rule and may not be
17 less than \$1,000 or more than \$3,000 per biennium. The annual
18 ~~license fee required of a PPEC center shall be in an amount~~
19 ~~determined by the agency to be sufficient to cover the~~
20 ~~agency's costs in carrying out its responsibilities under this~~
21 ~~part, but shall not be less than \$500 or more than \$1,500.~~

22 ~~(3)(4)~~ County-operated or municipally operated PPEC
23 centers applying for licensure under this part are exempt from
24 the payment of license fees.

25 ~~(5) The license shall be displayed in a conspicuous~~
26 ~~place inside the PPEC center.~~

27 ~~(6) A license shall be valid only in the possession of~~
28 ~~the individual, firm, partnership, association, or corporation~~
29 ~~to whom it is issued and shall not be subject to sale,~~
30 ~~assignment, or other transfer, voluntary or involuntary; nor~~
31

1 ~~shall a license be valid for any premises other than that for~~
2 ~~which originally issued.~~

3 ~~(7) Any license granted by the agency shall state the~~
4 ~~maximum capacity of the facility, the date the license was~~
5 ~~issued, the expiration date of the license, and any other~~
6 ~~information deemed necessary by the agency.~~

7 Section 149. Section 400.906, Florida Statutes, is
8 repealed.

9 Section 150. Section 400.907, Florida Statutes, is
10 amended to read:

11 400.907 Denial or, ~~suspension~~, revocation of
12 licensure; administrative fines; grounds.--

13 (1) In accordance with part II of chapter 408, the
14 agency may deny or, revoke, ~~or suspend~~ a license or impose an
15 administrative fine for a violation of any provision of this
16 part, part II of chapter 408, or applicable rules in the
17 manner provided in chapter 120.

18 (2) Any of the following actions by a PPEC center ~~or~~
19 ~~its~~ employee is grounds for action by the agency against a
20 PPEC center or its employee:

21 (a) An intentional or negligent act materially
22 affecting the health or safety of children in the PPEC center.

23 (b) A violation of the provisions of this part, part
24 II of chapter 408, or applicable rules ~~or of any standards or~~
25 ~~rules adopted pursuant to this part.~~

26 ~~(c) Multiple and repeated violations of this part or~~
27 ~~of minimum standards or rules adopted pursuant to this part.~~

28 ~~(3) The agency shall be responsible for all~~
29 ~~investigations and inspections conducted pursuant to this~~
30 ~~part.~~

31

1 Section 151. Section 400.908, Florida Statutes, is
2 amended to read:

3 400.908 Administrative fines; disposition of fees and
4 fines.--

5 (1)(a) If the agency determines that a PPEC center is
6 ~~being operated without a license or is otherwise~~ not in
7 compliance with ~~rules adopted under~~ this part, part II of
8 chapter 408, or applicable rules, the agency, notwithstanding
9 any other administrative action it takes, shall make a
10 reasonable attempt to discuss each violation and recommended
11 corrective action with the owner of the PPEC center prior to
12 written notification thereof. The agency may request that the
13 PPEC center submit a corrective action plan which demonstrates
14 a good faith effort to remedy each violation by a specific
15 date, subject to the approval of the agency.

16 (b) In accordance with part II of chapter 408, the
17 agency may fine a PPEC center or employee found in violation
18 of ~~rules adopted pursuant to~~ this part, part II of chapter
19 408, or applicable rules in an amount not to exceed \$500 for
20 each violation. Such fine may not exceed \$5,000 in the
21 aggregate.

22 (c) The failure to correct a violation by the date set
23 by the agency, or the failure to comply with an approved
24 corrective action plan, is a separate violation for each day
25 such failure continues, unless the agency approves an
26 extension to a specific date.

27 ~~(d) If a PPEC center desires to appeal any agency~~
28 ~~action under this section and the fine is upheld, the violator~~
29 ~~shall pay the fine, plus interest at the legal rate specified~~
30 ~~in s. 687.01, for each day beyond the date set by the agency~~
31 ~~for payment of the fine.~~

1 (2) In determining if a fine is to be imposed and in
2 fixing the amount of any fine, the agency shall consider the
3 following factors:

4 (a) The gravity of the violation, including the
5 probability that death or serious physical or emotional harm
6 to a child will result or has resulted, the severity of the
7 actual or potential harm, and the extent to which the
8 provisions of the applicable statutes or rules were violated.

9 (b) Actions taken by the owner or operator to correct
10 violations.

11 (c) Any previous violations.

12 (d) The financial benefit to the PPEC center of
13 committing or continuing the violation.

14 ~~(3) Fees and fines received by the agency under this~~
15 ~~part shall be deposited in the Health Care Trust Fund created~~
16 ~~in s. 408.16.~~

17 Section 152. Sections 400.910 and 400.911, Florida
18 Statutes, are repealed.

19 Section 153. Section 400.912, Florida Statutes, is
20 amended to read:

21 400.912 Closing of a PPEC center.--

22 ~~(1) Whenever a PPEC center voluntarily discontinues~~
23 ~~operation, it shall inform the agency in writing at least 30~~
24 ~~days before the discontinuance of operation. The PPEC center~~
25 ~~shall also, at such time, inform each child's legal guardian~~
26 ~~of the fact and the proposed time of such discontinuance.~~

27 ~~(2) Immediately upon discontinuance of the operation~~
28 ~~of a PPEC center, the owner or operator shall surrender the~~
29 ~~license therefor to the agency and the license shall be~~
30 ~~canceled.~~

31

1 Section 154. Section 400.913, Florida Statutes, is
2 repealed.

3 Section 155. Subsection (1) of section 400.914,
4 Florida Statutes, is amended to read:

5 400.914 Rules establishing standards.--

6 (1) Pursuant to the intention of the Legislature to
7 provide safe and sanitary facilities and healthful programs,
8 the agency in conjunction with the Division of Children's
9 Medical Services Prevention and Intervention of the Department
10 of Health shall adopt and publish rules to implement the
11 provisions of this part and part II of chapter 408, which
12 shall include reasonable and fair standards. Any conflict
13 between these standards and those that may be set forth in
14 local, county, or city ordinances shall be resolved in favor
15 of those having statewide effect. Such standards shall relate
16 to:

17 (a) The assurance that PPEC services are family
18 centered and provide individualized medical, developmental,
19 and family training services.

20 (b) The maintenance of PPEC centers, not in conflict
21 with the provisions of chapter 553 and based upon the size of
22 the structure and number of children, relating to plumbing,
23 heating, lighting, ventilation, and other building conditions,
24 including adequate space, which will ensure the health,
25 safety, comfort, and protection from fire of the children
26 served.

27 (c) The appropriate provisions of the most recent
28 edition of the "Life Safety Code" (NFPA-101) shall be applied.

29 (d) The number and qualifications of all personnel who
30 have responsibility for the care of the children served.

31

1 (e) All sanitary conditions within the PPEC center and
2 its surroundings, including water supply, sewage disposal,
3 food handling, and general hygiene, and maintenance thereof,
4 which will ensure the health and comfort of children served.

5 (f) Programs and basic services promoting and
6 maintaining the health and development of the children served
7 and meeting the training needs of the children's legal
8 guardians.

9 (g) Supportive, contracted, other operational, and
10 transportation services.

11 (h) Maintenance of appropriate medical records, data,
12 and information relative to the children and programs. Such
13 records shall be maintained in the facility for inspection by
14 the agency.

15 Section 156. Section 400.915, Florida Statutes, is
16 amended to read:

17 400.915 Construction and renovation;
18 requirements.--The requirements for the construction or
19 renovation of a PPEC center shall comply with:

20 (1) The provisions of chapter 553, which pertain to
21 building construction standards, including plumbing,
22 electrical code, glass, manufactured buildings, accessibility
23 for the physically disabled;

24 (2) The minimum standards for physical facilities in
25 rule 10M-12.003, Florida Administrative Code, Child Care
26 Standards; and

27 (3) The standards or rules adopted pursuant to this
28 part and part II of chapter 408.

29 Section 157. Sections 400.916 and 400.917, Florida
30 Statutes, are repealed.

31

1 Section 158. Section 400.925, Florida Statutes, is
2 amended to read:

3 400.925 Definitions.--As used in this part, the term:

4 (1) "Accrediting organizations" means the Joint
5 Commission on Accreditation of Healthcare Organizations or
6 other national accreditation agencies whose standards for
7 accreditation are comparable to those required by this part
8 for licensure.

9 ~~(2) "Affiliated person" means any person who directly~~
10 ~~or indirectly manages, controls, or oversees the operation of~~
11 ~~a corporation or other business entity that is a licensee,~~
12 ~~regardless of whether such person is a partner, shareholder,~~
13 ~~owner, officer, director, agent, or employee of the entity.~~

14 (2)(3) "Agency" means the Agency for Health Care
15 Administration.

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

22 (3)(5) "Consumer" or "patient" means any person who
23 uses home medical equipment in his or her place of residence.

24 (4)(6) "Department" means the Department of Children
25 and Family Services.

26 (5)(7) "General manager" means the individual who has
27 the general administrative charge of the premises of a
28 licensed home medical equipment provider.

29 (6)(8) "Home medical equipment" includes any product
30 as defined by the Federal Drug Administration's Drugs, Devices
31 and Cosmetics Act, any products reimbursed under the Medicare

1 Part B Durable Medical Equipment benefits, or any products
2 reimbursed under the Florida Medicaid durable medical
3 equipment program. Home medical equipment includes oxygen and
4 related respiratory equipment; manual, motorized, or
5 customized wheelchairs and related seating and positioning,
6 but does not include prosthetics or orthotics or any splints,
7 braces, or aids custom fabricated by a licensed health care
8 practitioner; motorized scooters; personal transfer systems;
9 and specialty beds, for use by a person with a medical need.

10 ~~(7)(9)~~ "Home medical equipment provider" means any
11 person or entity that sells or rents or offers to sell or rent
12 to or for a consumer:

13 (a) Any home medical equipment and services; or

14 (b) Home medical equipment that requires any home
15 medical equipment services.

16 ~~(8)(10)~~ "Home medical equipment provider personnel"
17 means persons who are employed by or under contract with a
18 home medical equipment provider.

19 ~~(9)(11)~~ "Home medical equipment services" means
20 equipment management and consumer instruction, including
21 selection, delivery, setup, and maintenance of equipment, and
22 other related services for the use of home medical equipment
23 in the consumer's regular or temporary place of residence.

24 ~~(10)(12)~~ "Licensee" means the person or entity to whom
25 a license to operate as a home medical equipment provider is
26 issued by the agency.

27 ~~(11)(13)~~ "Moratorium" has the same meaning as in s.
28 408.803, except that means a mandated temporary cessation or
29 suspension of the sale, rental, or offering of equipment after
30 the imposition of the moratorium. services related to
31 equipment sold or rented prior to the moratorium must be

1 continued without interruption, unless deemed otherwise by the
2 agency.

3 ~~(12)(14)~~ "Person" means any individual, firm,
4 partnership, corporation, or association.

5 ~~(13)(15)~~ "Premises" means those buildings and
6 equipment which are located at the address of the licensed
7 home medical equipment provider for the provision of home
8 medical equipment services, which are in such reasonable
9 proximity as to appear to the public to be a single provider
10 location, and which comply with zoning ordinances.

11 ~~(14)(16)~~ "Residence" means the consumer's home or
12 place of residence, which may include nursing homes, assisted
13 living facilities, transitional living facilities, adult
14 family-care homes, or other congregate residential facilities.

15 Section 159. Subsection (3) and paragraphs (d) and (e)
16 of subsection (6) of section 400.93, Florida Statutes, are
17 amended to read:

18 400.93 Licensure required; exemptions; unlawful acts;
19 penalties.--

20 (3) The requirements of part II of chapter 408 apply
21 to the provision of services that necessitate licensure
22 pursuant to this part and part II of chapter 408 and to
23 entities licensed by or applying for such licensure from the
24 Agency for Health Care Administration pursuant to this part.
25 However, an applicant for licensure is exempt from the
26 provisions of s. 408.810(8) and (10). A home medical equipment
27 provider must be licensed by the agency to operate in this
28 state or to provide home medical equipment and services to
29 consumers in this state. A standard license issued to a home
30 medical equipment provider, unless sooner suspended or
31 revoked, expires 2 years after its effective date.

1 (6)

2 ~~(d) The following penalties shall be imposed for~~
3 ~~operating an unlicensed home medical equipment provider:~~

4 1. ~~Any person or entity who operates an unlicensed~~
5 ~~provider commits a felony of the third degree.~~

6 2. ~~For any person or entity who has received~~
7 ~~government reimbursement for services provided by an~~
8 ~~unlicensed provider, the agency shall make a fraud referral to~~
9 ~~the appropriate government reimbursement program.~~

10 3. ~~For any licensee found to be concurrently operating~~
11 ~~licensed and unlicensed provider premises, the agency may~~
12 ~~impose a fine or moratorium, or revoke existing licenses of~~
13 ~~any or all of the licensee's licensed provider locations until~~
14 ~~such time as the unlicensed provider premises is licensed.~~

15 ~~(e) A provider found to be operating without a license~~
16 ~~may apply for licensure, and must cease operations until a~~
17 ~~license is awarded by the agency.~~

18 Section 160. Section 400.931, Florida Statutes, is
19 amended to read:

20 400.931 Application for license; fee; provisional
21 license; temporary permit.--

22 ~~(1) Application for an initial license or for renewal~~
23 ~~of an existing license must be made under oath to the agency~~
24 ~~on forms furnished by it and must be accompanied by the~~
25 ~~appropriate license fee as provided in subsection (12).~~

26 (1)(2) The applicant must file with the application
27 satisfactory proof that the home medical equipment provider is
28 in compliance with this part and applicable rules, including:

29 (a) A report, by category, of the equipment to be
30 provided, indicating those offered either directly by the
31

1 applicant or through contractual arrangements with existing
2 providers. Categories of equipment include:

- 3 1. Respiratory modalities.
- 4 2. Ambulation aids.
- 5 3. Mobility aids.
- 6 4. Sickroom setup.
- 7 5. Disposables.

8 (b) A report, by category, of the services to be
9 provided, indicating those offered either directly by the
10 applicant or through contractual arrangements with existing
11 providers. Categories of services include:

- 12 1. Intake.
- 13 2. Equipment selection.
- 14 3. Delivery.
- 15 4. Setup and installation.
- 16 5. Patient training.
- 17 6. Ongoing service and maintenance.
- 18 7. Retrieval.

19 (c) A listing of those with whom the applicant
20 contracts, both the providers the applicant uses to provide
21 equipment or services to its consumers and the providers for
22 whom the applicant provides services or equipment.

23 ~~(2)(3)~~ The applicant for initial licensure must
24 demonstrate financial ability to operate, which may be
25 accomplished by the submission of a \$50,000 surety bond to the
26 agency in lieu of the requirements of s. 408.810(8).

27 ~~(4) An applicant for renewal who has demonstrated~~
28 ~~financial inability to operate must demonstrate financial~~
29 ~~ability to operate.~~

30 ~~(5) Each applicant for licensure must comply with the~~
31 ~~following requirements:~~

1 ~~(a) Upon receipt of a completed, signed, and dated~~
2 ~~application, the agency shall require background screening of~~
3 ~~the applicant, in accordance with the level 2 standards for~~
4 ~~screening set forth in chapter 435. As used in this~~
5 ~~subsection, the term "applicant" means the general manager and~~
6 ~~the financial officer or similarly titled individual who is~~
7 ~~responsible for the financial operation of the licensed~~
8 ~~facility.~~

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

15 ~~(c) Proof of compliance with the level 2 background~~
16 ~~screening requirements of chapter 435 which has been submitted~~
17 ~~within the previous 5 years in compliance with any other~~
18 ~~health care licensure requirements of this state is acceptable~~
19 ~~in fulfillment of paragraph (a).~~

20 ~~(d) Each applicant must submit to the agency, with its~~
21 ~~application, a description and explanation of any exclusions,~~
22 ~~permanent suspensions, or terminations of the applicant from~~
23 ~~the Medicare or Medicaid programs. Proof of compliance with~~
24 ~~disclosure of ownership and control interest requirements of~~
25 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
26 ~~this submission.~~

27 ~~(e) Each applicant must submit to the agency a~~
28 ~~description and explanation of any conviction of an offense~~
29 ~~prohibited under the level 2 standards of chapter 435 by a~~
30 ~~member of the board of directors of the applicant, its~~
31 ~~officers, or any individual owning 5 percent or more of the~~

1 ~~applicant. This requirement does not apply to a director of a~~
2 ~~not for profit corporation or organization if the director~~
3 ~~serves solely in a voluntary capacity for the corporation or~~
4 ~~organization, does not regularly take part in the day to day~~
5 ~~operational decisions of the corporation or organization,~~
6 ~~receives no remuneration for his or her services on the~~
7 ~~corporation's or organization's board of directors, and has no~~
8 ~~financial interest and has no family members with a financial~~
9 ~~interest in the corporation or organization, provided that the~~
10 ~~director and the not for profit corporation or organization~~
11 ~~include in the application a statement affirming that the~~
12 ~~director's relationship to the corporation satisfies the~~
13 ~~requirements of this provision.~~

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

21 ~~(g) The agency may deny or revoke licensure to any~~
22 ~~potential licensee if any applicant:~~

23 ~~1. Has falsely represented a material fact in the~~
24 ~~application required by paragraphs (d) and (e), or has omitted~~
25 ~~any material fact from the application required by paragraphs~~
26 ~~(d) and (e); or~~

27 ~~2. Has had prior Medicaid or Medicare action taken~~
28 ~~against the applicant as set forth in paragraph (d).~~

29 ~~(h) Upon licensure renewal, each applicant must submit~~
30 ~~to the agency, under penalty of perjury, an affidavit of~~
31

1 ~~compliance with the background screening provisions of this~~
2 ~~section.~~

3 (3)(6) As specified in part II of chapter 408, the
4 home medical equipment provider must also obtain and maintain
5 professional and commercial liability insurance. Proof of
6 liability insurance, as defined in s. 624.605, must be
7 submitted with the application. The agency shall set the
8 required amounts of liability insurance by rule, but the
9 required amount must not be less than \$250,000 per claim. In
10 the case of contracted services, it is required that the
11 contractor have liability insurance not less than \$250,000 per
12 claim.

13 ~~(7) A provisional license shall be issued to an~~
14 ~~approved applicant for initial licensure for a period of 90~~
15 ~~days, during which time a survey must be conducted~~
16 ~~demonstrating substantial compliance with this section. A~~
17 ~~provisional license shall also be issued pending the results~~
18 ~~of an applicant's Federal Bureau of Investigation report of~~
19 ~~background screening confirming that all standards have been~~
20 ~~met. If substantial compliance is demonstrated, a standard~~
21 ~~license shall be issued to expire 2 years after the effective~~
22 ~~date of the provisional license.~~

23 ~~(8) Ninety days before the expiration date, an~~
24 ~~application for license renewal must be submitted to the~~
25 ~~agency under oath on forms furnished by the agency, and a~~
26 ~~license shall be renewed if the applicant has met the~~
27 ~~requirements established under this part and applicable rules.~~
28 ~~The home medical equipment provider must file with the~~
29 ~~application satisfactory proof that it is in compliance with~~
30 ~~this part and applicable rules. The home medical equipment~~

31

1 ~~provider must submit satisfactory proof of its financial~~
2 ~~ability to comply with the requirements of this part.~~

3 ~~(9) When a change of ownership of a home medical~~
4 ~~equipment provider occurs, the prospective owner must submit~~
5 ~~an initial application for a license at least 15 days before~~
6 ~~the effective date of the change of ownership. An application~~
7 ~~for change of ownership of a license is required when~~
8 ~~ownership, a majority of the ownership, or controlling~~
9 ~~interest of a licensed home medical equipment provider is~~
10 ~~transferred or assigned and when a licensee agrees to~~
11 ~~undertake or provide services to the extent that legal~~
12 ~~liability for operation of the home medical equipment provider~~
13 ~~rests with the licensee. A provisional license shall be issued~~
14 ~~to the new owner for a period of 90 days, during which time~~
15 ~~all required documentation must be submitted and a survey must~~
16 ~~be conducted demonstrating substantial compliance with this~~
17 ~~section. If substantial compliance is demonstrated, a standard~~
18 ~~license shall be issued to expire 2 years after the issuance~~
19 ~~of the provisional license.~~

20 ~~(4)(10)~~ When a change of the general manager of a home
21 medical equipment provider occurs, the licensee must notify
22 the agency of the change within 45 days, thereof and must
23 ~~provide evidence of compliance with the background screening~~
24 ~~requirements in subsection (5); except that a general manager~~
25 ~~who has met the standards for the Department of Law~~
26 ~~Enforcement background check, but for whom background~~
27 ~~screening results from the Federal Bureau of Investigation~~
28 ~~have not yet been received, may be employed pending receipt of~~
29 ~~the Federal Bureau of Investigation background screening~~
30 ~~report. An individual may not continue to serve as general~~
31 ~~manager if the Federal Bureau of Investigation background~~

1 ~~screening report indicates any violation of background~~
2 ~~screening standards.~~

3 (5)(11) 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
7 exceed \$300 per biennium. All licensure fees required of a
8 ~~home medical equipment provider are nonrefundable.~~ The agency
9 shall set the fees in an amount that is sufficient to cover
10 its costs in carrying out its responsibilities under this
11 part. However, state, county, or municipal governments
12 applying for licenses under this part are exempt from the
13 payment of license fees. ~~All fees collected under this part~~
14 ~~must be deposited in the Health Care Trust Fund for the~~
15 ~~administration of this part.~~

16 (6)(12) An applicant for initial licensure, renewal,
17 or change of ownership shall also pay a license processing fee
18 not to exceed \$300, to be paid by all applicants, and an
19 inspection fee, not to exceed \$400, which shall to be paid by
20 all applicants except those not subject to licensure
21 inspection by the agency as described in s. 400.933(2).

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

25 ~~(14) When a duplicate license is issued, a fee must be~~
26 ~~assessed, not to exceed the actual cost of duplicating and~~
27 ~~mailing.~~

28 ~~(15) When applications are mailed out upon request, a~~
29 ~~fee must be assessed, not to exceed the cost of the printing,~~
30 ~~preparation, and mailing.~~

31

1 ~~(16) The license must be displayed in a conspicuous~~
2 ~~place in the administrative office of the home medical~~
3 ~~equipment provider and is valid only while in the possession~~
4 ~~of the person or entity to which it is issued. The license may~~
5 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
6 ~~or involuntarily, and is valid only for the home medical~~
7 ~~equipment provider and location for which originally issued.~~

8 ~~(17) A home medical equipment provider against whom a~~
9 ~~proceeding for revocation or suspension, or for denial of a~~
10 ~~renewal application, is pending at the time of license renewal~~
11 ~~may be issued a provisional license effective until final~~
12 ~~disposition by the agency of such proceedings. If judicial~~
13 ~~relief is sought from the final disposition, the court that~~
14 ~~has jurisdiction may issue a temporary permit for the duration~~
15 ~~of the judicial proceeding.~~

16 Section 161. Section 400.932, Florida Statutes, is
17 amended to read:

18 400.932 Administrative penalties; injunctions;
19 emergency orders; moratoriums.--

20 (1) The agency may deny or, ~~revoke, or suspend~~ a
21 license, or impose an administrative fine not to exceed \$5,000
22 per violation, per day, or initiate injunctive proceedings
23 under s. 400.956.

24 (2) Any of the following actions by an employee of a
25 home medical equipment provider ~~or any of its employees~~ is
26 grounds for administrative action or penalties by the agency:

27 (a) Violation of this part or of applicable rules.

28 (b) An intentional, reckless, or negligent act that
29 materially affects the health or safety of a patient.

30 (3) The agency may deny or revoke the license of any
31 applicant that:

1 ~~(a) Made a false representation or omission of any~~
2 ~~material fact in making the application, including the~~
3 ~~submission of an application that conceals the controlling or~~
4 ~~ownership interest or any officer, director, agent, managing~~
5 ~~employee, affiliated person, partner, or shareholder who may~~
6 ~~not be eligible to participate;~~

7 (a)(b) Has been previously found by any professional
8 licensing, certifying, or standards board or agency to have
9 violated the standards or conditions relating to licensure or
10 certification or the quality of services provided.

11 "Professional licensing, certifying, or standards board or
12 agency" shall include, but is not limited to, practitioners,
13 health care facilities, programs, or services, or residential
14 care, treatment programs, or other human services; or

15 (b)(c) Has been or is currently excluded, suspended,
16 or terminated from, or has involuntarily withdrawn from,
17 participation in Florida's Medicaid program or any other
18 state's Medicaid program, or participation in the Medicare
19 program or any other governmental or private health care or
20 health insurance program.

21 ~~(4) The agency may issue an emergency order~~
22 ~~immediately suspending or revoking a license when it~~
23 ~~determines that any condition within the responsibility of the~~
24 ~~home medical equipment provider presents a clear and present~~
25 ~~danger to public health and safety.~~

26 ~~(5) The agency may impose an immediate moratorium on~~
27 ~~any licensed home medical equipment provider when the agency~~
28 ~~determines that any condition within the responsibility of the~~
29 ~~home medical equipment provider presents a threat to public~~
30 ~~health or safety.~~

31

1 Section 162. Section 400.933, Florida Statutes, is
2 amended to read:

3 400.933 Licensure inspections and investigations.--

4 ~~(1) The agency shall make or cause to be made such~~
5 ~~inspections and investigations as it considers necessary,~~
6 ~~including:~~

7 ~~(a) Licensure inspections.~~

8 ~~(b) Inspections directed by the federal Health Care~~
9 ~~Financing Administration.~~

10 ~~(c) Licensure complaint investigations, including full~~
11 ~~licensure investigations with a review of all licensure~~
12 ~~standards as outlined in the administrative rules. Complaints~~
13 ~~received by the agency from individuals, organizations, or~~
14 ~~other sources are subject to review and investigation by the~~
15 ~~agency.~~

16 ~~(2)~~ The agency shall accept, in lieu of its own
17 periodic inspections for licensure, submission of the
18 following:

19 (1)(a) The survey or inspection of an accrediting
20 organization, provided the accreditation of the licensed home
21 medical equipment provider is not provisional and provided the
22 licensed home medical equipment provider authorizes release
23 of, and the agency receives the report of, the accrediting
24 organization; or

25 (2)(b) A copy of a valid medical oxygen retail
26 establishment permit issued by the Department of Health,
27 pursuant to chapter 499.

28 Section 163. Section 400.935, Florida Statutes, is
29 amended to read:

30 400.935 Rules establishing minimum standards.--The
31 agency shall adopt, publish, and enforce rules to implement

1 | this part and part II of chapter 408, which must provide
2 | reasonable and fair minimum standards relating to:

3 | (1) The qualifications and minimum training
4 | requirements of all home medical equipment provider personnel.

5 | ~~(2) License application and renewal.~~

6 | ~~(3) License and inspection fees.~~

7 | ~~(2)(4)~~ Financial ability to operate.

8 | ~~(3)(5)~~ The administration of the home medical
9 | equipment provider.

10 | ~~(4)(6)~~ Procedures for maintaining patient records.

11 | ~~(5)(7)~~ Ensuring that the home medical equipment and
12 | services provided by a home medical equipment provider are in
13 | accordance with the plan of treatment established for each
14 | patient, when provided as a part of a plan of treatment.

15 | ~~(6)(8)~~ Contractual arrangements for the provision of
16 | home medical equipment and services by providers not employed
17 | by the home medical equipment provider providing for the
18 | consumer's needs.

19 | ~~(7)(9)~~ Physical location and zoning requirements.

20 | ~~(8)(10)~~ Home medical equipment requiring home medical
21 | equipment services.

22 | Section 164. Section 400.95, subsection (2) of section
23 | 400.953, subsection (4) of section 400.955, and section
24 | 400.956, Florida Statutes, are repealed.

25 | Section 165. Subsection (5) of section 400.960,
26 | Florida Statutes, is amended to read:

27 | 400.960 Definitions.--As used in this part, the term:

28 | (5) "Client" means any person receiving services in an
29 | intermediate care facility for the developmentally disabled
30 | ~~determined by the department to be eligible for developmental~~
31 | ~~services.~~

1 Section 166. Section 400.962, Florida Statutes, is
2 amended to read:

3 400.962 License required; license application.--

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 s.

10 408.810(7). The licensure fee shall be \$234 per bed unless
11 modified by rule. It is unlawful to operate an intermediate
12 care facility for the developmentally disabled without a
13 license.

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

18 ~~(3) The basic license fee collected shall be deposited~~
19 ~~in the Health Care Trust Fund, established for carrying out~~
20 ~~the purposes of this chapter.~~

21 ~~(4) The license must be conspicuously displayed inside~~
22 ~~the facility.~~

23 ~~(5) A license is valid only in the hands of the~~
24 ~~individual, firm, partnership, association, or corporation to~~
25 ~~whom it is issued. A license is not valid for any premises~~
26 ~~other than those for which it was originally issued and may~~
27 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
28 ~~or involuntarily.~~

29 ~~(6) An application for a license shall be made to the~~
30 ~~agency on forms furnished by it and must be accompanied by the~~
31 ~~appropriate license fee.~~

1 ~~(7) The application must be under oath and must~~
2 ~~contain the following:~~

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

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

20 ~~(c) The location of the facility for which a license~~
21 ~~is sought and an indication that such location conforms to the~~
22 ~~local zoning ordinances.~~

23 ~~(d) The name of the persons under whose management or~~
24 ~~supervision the facility will be operated.~~

25 ~~(e) The total number of beds.~~

26 (3)(8) The applicant must demonstrate that sufficient
27 numbers of staff, qualified by training or experience, will be
28 employed to properly care for the type and number of residents
29 who will reside in the facility.

30 ~~(9) The applicant must submit evidence that~~
31 ~~establishes the good moral character of the applicant,~~

1 ~~manager, supervisor, and administrator. An applicant who is an~~
2 ~~individual or a member of a board of directors or officer of~~
3 ~~an applicant that is a firm, partnership, association, or~~
4 ~~corporation must not have been convicted, or found guilty,~~
5 ~~regardless of adjudication, of a crime in any jurisdiction~~
6 ~~which affects or may potentially affect residents in the~~
7 ~~facility.~~

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

18 ~~(b) The agency may require background screening for a~~
19 ~~member of the board of directors of the licensee or an officer~~
20 ~~or an individual owning 5 percent or more of the licensee if~~
21 ~~the agency has probable cause to believe that such individual~~
22 ~~has been convicted of an offense prohibited under the level 2~~
23 ~~standards for screening set forth 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 ~~licensure requirements under this chapter satisfies the~~
28 ~~requirements of paragraph (a). Proof of compliance with~~
29 ~~background screening which has been submitted within the~~
30 ~~previous 5 years to fulfill the requirements of the Financial~~
31 ~~Services Commission and the Office of Insurance Regulation~~

1 ~~under chapter 651 as part of an application for a certificate~~
2 ~~of authority to operate a continuing care retirement community~~
3 ~~satisfies the requirements for the Department of Law~~
4 ~~Enforcement and Federal Bureau of Investigation background~~
5 ~~checks.~~

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

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

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

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

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

24 ~~(11) The applicant must furnish satisfactory proof of~~
25 ~~financial ability to operate and conduct the facility in~~
26 ~~accordance with the requirements of this part and all rules~~
27 ~~adopted under this part, and the agency shall establish~~
28 ~~standards for this purpose.~~

29 Section 167. Sections 400.963 and 400.965, Florida
30 Statutes, are repealed.

31

1 Section 168. Section 400.967, Florida Statutes, is
2 amended to read:

3 400.967 Rules and classification of deficiencies.--

4 (1) It is the intent of the Legislature that rules
5 adopted and enforced under this part and part II of chapter
6 408 include criteria by which a reasonable and consistent
7 quality of resident care may be ensured, the results of such
8 resident care can be demonstrated, and safe and sanitary
9 facilities can be provided.

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

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

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

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

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

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

23 | (e) A uniform accounting system.

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

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

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

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

22 (3) In accordance with part II of chapter 408, the
23 agency shall adopt rules to provide that, when the criteria
24 established under this part and part II of chapter 408
25 ~~subsection (2)~~ are not met, such deficiencies shall be
26 classified according to the nature of the deficiency. The
27 agency shall indicate the classification on the face of the
28 notice of deficiencies as follows:

29 (a) Class I deficiencies are those which the agency
30 determines present an ~~and~~ imminent danger to the residents or
31 guests of the facility or a substantial probability that death

1 or serious physical harm would result therefrom. The condition
2 or practice constituting a class I violation must be abated or
3 eliminated immediately, unless a fixed period of time, as
4 determined by the agency, is required for correction.

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

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

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

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

1 ~~(4)~~(5) The agency shall approve or disapprove the
2 plans and specifications within 60 days after receipt of the
3 final plans and specifications. The agency may be granted one
4 15-day extension for the review period, if the secretary of
5 the agency so approves. If the agency fails to act within the
6 specified time, it is deemed to have approved the plans and
7 specifications. When the agency disapproves plans and
8 specifications, it must set forth in writing the reasons for
9 disapproval. Conferences and consultations may be provided as
10 necessary.

11 ~~(5)~~(6) The agency may charge an initial fee of \$2,000
12 for review of plans and construction on all projects, no part
13 of which is refundable. The agency may also collect a fee, not
14 to exceed 1 percent of the estimated construction cost or the
15 actual cost of review, whichever is less, for the portion of
16 the review which encompasses initial review through the
17 initial revised construction document review. The agency may
18 collect its actual costs on all subsequent portions of the
19 review and construction inspections. Initial fee payment must
20 accompany the initial submission of plans and specifications.
21 Any subsequent payment that is due is payable upon receipt of
22 the invoice from the agency. Notwithstanding any other
23 provision of law, all money received by the agency under this
24 section shall be deemed to be trust funds, to be held and
25 applied solely for the operations required under this section.

26 Section 169. Section 400.968, Florida Statutes, is
27 amended to read:

28 400.968 Right of entry; ~~protection of health, safety,~~
29 ~~and welfare.--~~

30 ~~(1)~~ Any designated officer or employee of the agency,
31 of the state, or of the local fire marshal may enter

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

29 ~~(2) The agency may institute injunctive proceedings in~~
30 ~~a court of competent jurisdiction for temporary or permanent~~
31 ~~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 ~~(3) 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 Section 170. Subsection (1) of section 400.969,
26 Florida Statutes, is amended to read:

27 400.969 Violation of part; penalties.--

28 (1) In accordance with part II of chapter 408, and
29 except as provided in s. 400.967(3), a violation of any
30 provision of this part, part II of chapter 408, or applicable
31 rules adopted by the agency under this part is punishable by

1 payment of an administrative or civil penalty not to exceed
2 \$5,000.

3 Section 171. Section 400.980, Florida Statutes, is
4 amended to read:

5 400.980 Health care services pools.--

6 (1) As used in this section, the term:

7 (a) "Agency" means the Agency for Health Care
8 Administration.

9 (b) "Health care services pool" means any person,
10 firm, corporation, partnership, or association engaged for
11 hire in the business of providing temporary employment in
12 health care facilities, residential facilities, and agencies
13 for licensed, certified, or trained health care personnel
14 including, without limitation, nursing assistants, nurses'
15 aides, and orderlies. However, the term does not include
16 nursing registries, a facility licensed under chapter 400, a
17 health care services pool established within a health care
18 facility to provide services only within the confines of such
19 facility, or any individual contractor directly providing
20 temporary services to a health care facility without use or
21 benefit of a contracting agent.

22 (2) The requirements of part II of chapter 408 apply
23 to the provision of services that necessitate licensure or
24 registration pursuant to this part and part II of chapter 408
25 and to entities registered by or applying for such
26 registration from the Agency for Health Care Administration
27 pursuant to this part; however, an applicant for licensure is
28 exempt from s. 408.810(6)-(10). ~~Each person who operates a~~
29 ~~health care services pool must register each separate business~~
30 ~~location with the agency.~~ The agency shall adopt rules and
31 provide forms required for such registration and shall impose

1 a registration fee in an amount sufficient to cover the cost
2 of administering this section. In addition, the registrant
3 must provide the agency with any change of information
4 contained on the original registration application within 14
5 days prior to the change. ~~The agency may inspect the offices~~
6 ~~of any health care services pool at any reasonable time for~~
7 ~~the purpose of determining compliance with this section or the~~
8 ~~rules adopted under this section.~~

9 ~~(3) Each application for registration must include:~~

10 ~~(a) The name and address of any person who has an~~
11 ~~ownership interest in the business, and, in the case of a~~
12 ~~corporate owner, copies of the articles of incorporation,~~
13 ~~bylaws, and names and addresses of all officers and directors~~
14 ~~of the corporation.~~

15 ~~(b) Any other information required by the agency.~~

16 ~~(3)(4) Each applicant for registration must comply~~
17 ~~with the following requirements:~~

18 ~~(a) Upon receipt of a completed, signed, and dated~~
19 ~~application, the agency shall require background screening, in~~
20 ~~accordance with the level 1 standards for screening set forth~~
21 ~~in chapter 435, of every individual who will have contact with~~
22 ~~patients. The agency shall require background screening of the~~
23 ~~managing employee or other similarly titled individual who is~~
24 ~~responsible for the operation of the entity, and of the~~
25 ~~financial officer or other similarly titled individual who is~~
26 ~~responsible for the financial operation of the entity,~~
27 ~~including billings for services in accordance with the level 2~~
28 ~~standards for background screening as set forth in chapter~~
29 ~~435.~~

30 ~~(b) The agency may require background screening of any~~
31 ~~other individual who is affiliated with the applicant if the~~

1 ~~agency has a reasonable basis for believing that he or she has~~
2 ~~been convicted of a crime or has committed any other offense~~
3 ~~prohibited under the level 2 standards for screening set forth~~
4 ~~in chapter 435.~~

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

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

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

1 ~~permanent suspensions, or terminations of the applicant from~~
2 ~~the Medicare or Medicaid programs. Proof of compliance with~~
3 ~~the requirements for disclosure of ownership and controlling~~
4 ~~interests under the Medicaid or Medicare programs may be~~
5 ~~accepted in lieu of this submission.~~

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

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

31

1 ~~(h) Failure to provide all required documentation~~
2 ~~within 30 days after a written request from the agency will~~
3 ~~result in denial of the application for registration.~~

4 ~~(i) The agency must take final action on an~~
5 ~~application for registration within 60 days after receipt of~~
6 ~~all required documentation.~~

7 ~~(j) The agency may deny, revoke, or suspend the~~
8 ~~registration of any applicant or registrant who:~~

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

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

16 3. ~~Fails to comply with this section or applicable~~
17 ~~rules.~~

18 4. ~~Commits an intentional, reckless, or negligent act~~
19 ~~that materially affects the health or safety of a person~~
20 ~~receiving services.~~

21 ~~(4)(5)~~ It is a misdemeanor of the first degree,
22 punishable under s. 775.082 or s. 775.083, for any person
23 willfully, knowingly, or intentionally to:

24 (a) Fail, by false statement, misrepresentation,
25 impersonation, or other fraudulent means, to disclose in any
26 application for voluntary or paid employment a material fact
27 used in making a determination as to an applicant's
28 qualifications to be a contractor under this section;

29 (b) Operate or attempt to operate an entity registered
30 under this part with persons who do not meet the minimum
31 standards of chapter 435 as contained in this section; or

1 (c) Use information from the criminal records obtained
2 under this section for any purpose other than screening an
3 applicant for temporary employment as specified in this
4 section, or release such information to any other person for
5 any purpose other than screening for employment under this
6 section.

7 (5)(6) It is a felony of the third degree, punishable
8 under s. 775.082, s. 775.083, or s. 775.084, for any person
9 willfully, knowingly, or intentionally to use information from
10 the juvenile records of a person obtained under this section
11 for any purpose other than screening for employment under this
12 section.

13 ~~(7) It is unlawful for a person to offer or advertise~~
14 ~~services, as defined by rule, to the public without obtaining~~
15 ~~a certificate of registration from the Agency for Health Care~~
16 ~~Administration. It is unlawful for any holder of a certificate~~
17 ~~of registration to advertise or hold out to the public that he~~
18 ~~or she holds a certificate of registration for other than that~~
19 ~~for which he or she actually holds a certificate of~~
20 ~~registration. Any person who violates this subsection is~~
21 ~~subject to injunctive proceedings under s. 400.515.~~

22 ~~(8) Each registration shall be for a period of 2~~
23 ~~years. The application for renewal must be received by the~~
24 ~~agency at least 30 days before the expiration date of the~~
25 ~~registration. An application for a new registration is~~
26 ~~required within 30 days prior to the sale of a controlling~~
27 ~~interest in a health care services pool.~~

28 (6)(9) A health care services pool may not require an
29 employee to recruit new employees from persons employed at a
30 health care facility to which the health care services pool
31 employee is assigned. Nor shall a health care facility to

1 | which employees of a health care services pool are assigned
2 | recruit new employees from the health care services pool.

3 | ~~(7)~~~~(10)~~ A health care services pool shall document
4 | that each temporary employee provided to a health care
5 | facility has met the licensing, certification, training, or
6 | continuing education requirements, as established by the
7 | appropriate regulatory agency, for the position in which he or
8 | she will be working.

9 | ~~(8)~~~~(11)~~ When referring persons for temporary
10 | employment in health care facilities, a health care services
11 | pool shall comply with all pertinent state and federal laws,
12 | rules, and regulations relating to health, background
13 | screening, and other qualifications required of persons
14 | working in a facility of that type.

15 | ~~(9)~~~~(12)~~(a) As a condition of registration and prior to
16 | the issuance or renewal of a certificate of registration, a
17 | health care services pool applicant must prove financial
18 | responsibility to pay claims, and costs ancillary thereto,
19 | arising out of the rendering of services or failure to render
20 | services by the pool or by its employees in the course of
21 | their employment with the pool. The agency shall promulgate
22 | rules establishing minimum financial responsibility coverage
23 | amounts which shall be adequate to pay potential claims and
24 | costs ancillary thereto.

25 | (b) Each health care services pool shall give written
26 | notification to the agency within 20 days after any change in
27 | the method of assuring financial responsibility or upon
28 | cancellation or nonrenewal of professional liability
29 | insurance. Unless the pool demonstrates that it is otherwise
30 | in compliance with the requirements of this section, the
31 | agency shall suspend the registration of the pool pursuant to

1 ss. 120.569 and 120.57. Any suspension under this section
2 shall remain in effect until the pool demonstrates compliance
3 with the requirements of this section.

4 (c) Proof of financial responsibility must be
5 demonstrated to the satisfaction of the agency, through one of
6 the following methods:

7 1. Establishing and maintaining an escrow account
8 consisting of cash or assets eligible for deposit in
9 accordance with s. 625.52;

10 2. Obtaining and maintaining an unexpired irrevocable
11 letter of credit established pursuant to chapter 675. Such
12 letters of credit shall be nontransferable and nonassignable
13 and shall be issued by any bank or savings association
14 organized and existing under the laws of this state or any
15 bank or savings association organized under the laws of the
16 United States that has its principal place of business in this
17 state or has a branch office which is authorized under the
18 laws of this state or of the United States to receive deposits
19 in this state; or

20 3. Obtaining and maintaining professional liability
21 coverage from one of the following:

22 a. An authorized insurer as defined under s. 624.09;

23 b. An eligible surplus lines insurer as defined under
24 s. 626.918(2);

25 c. A risk retention group or purchasing group as
26 defined under s. 627.942; or

27 d. A plan of self-insurance as provided in s. 627.357.

28 (d) If financial responsibility requirements are met
29 by maintaining an escrow account or letter of credit, as
30 provided in this section, upon the entry of an adverse final
31 judgment arising from a medical malpractice arbitration award

1 | from a claim of medical malpractice either in contract or
2 | tort, or from noncompliance with the terms of a settlement
3 | agreement arising from a claim of medical malpractice either
4 | in contract or tort, the financial institution holding the
5 | escrow account or the letter of credit shall pay directly to
6 | the claimant the entire amount of the judgment together with
7 | all accrued interest or the amount maintained in the escrow
8 | account or letter of credit as required by this section,
9 | whichever is less, within 60 days after the date such judgment
10 | became final and subject to execution, unless otherwise
11 | mutually agreed to in writing by the parties. If timely
12 | payment is not made, the agency shall suspend the registration
13 | of the pool pursuant to procedures set forth by the agency
14 | through rule. Nothing in this paragraph shall abrogate a
15 | judgment debtor's obligation to satisfy the entire amount of
16 | any judgment.

17 | (e) Each health care services pool carrying
18 | claims-made coverage must demonstrate proof of extended
19 | reporting coverage through either tail or nose coverage, in
20 | the event the policy is canceled, replaced, or not renewed.
21 | Such extended coverage shall provide coverage for incidents
22 | that occurred during the claims-made policy period but were
23 | reported after the policy period.

24 | (f) The financial responsibility requirements of this
25 | section shall apply to claims for incidents that occur on or
26 | after January 1, 1991, or the initial date of registration in
27 | this state, whichever is later.

28 | (g) Meeting the financial responsibility requirements
29 | of this section must be established at the time of issuance or
30 | renewal of a certificate of registration.

31 |

1 ~~(10)(13)~~ The agency shall adopt rules to implement
2 this section and part II of chapter 408, including rules
3 providing for the establishment of:

4 (a) Minimum standards for the operation and
5 administration of health care personnel pools, including
6 procedures for recordkeeping and personnel.

7 (b) In accordance with part II of chapter 408, fines
8 for the violation of this part, part II of chapter 408, or
9 applicable rules ~~section~~ in an amount not to exceed \$2,500 ~~and~~
10 ~~suspension or revocation of registration.~~

11 ~~(c) Disciplinary sanctions for failure to comply with~~
12 ~~this section or the rules adopted under this section.~~

13 Section 172. Section 400.9905, Florida Statutes, is
14 amended to read:

15 400.9905 Definitions.--

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

18 ~~(2) "Applicant" means an individual owner,~~
19 ~~corporation, partnership, firm, business, association, or~~
20 ~~other entity that owns or controls, directly or indirectly, 5~~
21 ~~percent or more of an interest in the clinic and that applies~~
22 ~~for a clinic license.~~

23 (3) "Clinic" means an entity at which health care
24 services are provided to individuals and which tenders charges
25 for reimbursement for such services, including a mobile clinic
26 and a portable equipment provider. For purposes of this part,
27 the term does not include and the licensure requirements of
28 this part do not apply to:

29 (a) Entities licensed or registered by the state and
30 providing only health care services within the scope of
31 services authorized under their respective licenses granted

1 under s. 383.30, chapter 390, chapter 394, chapter 395,
2 chapter 397, this chapter ~~except part XIII~~, chapter 463,
3 chapter 465, chapter 466, chapter 478, ~~part I of chapter 483~~
4 ~~chapter 480~~, chapter 484, ~~or~~ chapter 651, end-stage renal
5 disease providers authorized under 42 C.F.R. part 405, subpart
6 U, or providers certified under 42 C.F.R. part 485, subpart B
7 or H.

8 (b) Entities that own, directly or indirectly,
9 entities licensed or registered by the state and providing
10 only health care services within the scope of services
11 authorized pursuant to their respective licenses granted under
12 s. 383.30, chapter 390, chapter 394, chapter 395, chapter 397,
13 this chapter ~~except part XIII~~, chapter 463, chapter 465,
14 chapter 466, chapter 478, ~~part I of chapter 483~~ ~~chapter 480~~,
15 chapter 484, ~~or~~ chapter 651, end-stage renal disease providers
16 authorized under 42 C.F.R. part 405, subpart U, or providers
17 certified under 42 C.F.R. part 485, subpart B or H.

18 (c) Entities that are owned, directly or indirectly,
19 by an entity licensed or registered by the state and providing
20 only health care services within the scope of services
21 authorized pursuant to their respective licenses granted under
22 s. 383.30, chapter 390, chapter 394, chapter 395, chapter 397,
23 this chapter ~~except part XIII~~, chapter 463, chapter 465,
24 chapter 466, chapter 478, ~~part I of chapter 483~~ ~~chapter 480~~,
25 chapter 484, ~~or~~ chapter 651, end-stage renal disease providers
26 authorized under 42 C.F.R. part 405, subpart U, or providers
27 certified under 42 C.F.R. part 485, subpart B or H.

28 (d) Entities that are under common ownership, directly
29 or indirectly, with an entity licensed or registered by the
30 state and providing only health care services within the scope
31 of services authorized pursuant to their respective licenses

1 granted under s. 383.30, chapter 390, chapter 394, chapter
2 395, chapter 397, this chapter ~~except part XIII~~, chapter 463,
3 chapter 465, chapter 466, chapter 478, ~~part I of chapter 483~~
4 ~~chapter 480, chapter 484, ~~or~~ chapter 651, end-stage renal~~
5 ~~disease providers authorized under 42 C.F.R. part 405, subpart~~
6 ~~U, or providers certified under 42 C.F.R. part 485, subpart B~~
7 ~~or H.~~

8 (e) An entity that is exempt from federal taxation
9 under 26 U.S.C. s. 501(c)(3) or s. 501 (c)(4), and any
10 community college or university clinic, or any entity owned or
11 operated by federal or state government, including agencies,
12 subdivisions, or municipalities thereof.

13 (f) A sole proprietorship, group practice,
14 partnership, or corporation that provides health care services
15 by licensed health care practitioners under chapter 457,
16 chapter 458, chapter 459, chapter 460, chapter 461, chapter
17 462, ~~chapter 463, chapter 466,~~ chapter 467, ~~chapter 480~~
18 ~~chapter 484, chapter 486, chapter 490, chapter 491, or part I,~~
19 part III, part X, part XIII, or part XIV of chapter 468, or s.
20 464.012, which are wholly owned by one or more ~~a~~ licensed
21 health care practitioners set forth in this paragraph
22 ~~practitioner~~, or the licensed health care practitioner and the
23 spouse, parent, or child of a licensed health care
24 practitioner, so long as one of the owners who is a licensed
25 health care practitioner is supervising the business
26 activities ~~services performed therein~~ and is legally
27 responsible for the entity's compliance with all federal and
28 state laws. ~~However, a health care practitioner may not~~
29 ~~supervise services beyond the scope of the practitioner's~~
30 ~~license. The violation of a state or federal law by an~~
31 ~~employee, owner, partner, or shareholder who provides health~~

1 care services at the entity constitutes a violation of s.
2 456.072(1)(k) by the licensee who commits the violation and by
3 the supervising owner.

4 (g) Clinical facilities affiliated with an accredited
5 medical school at which training is provided for medical
6 students, residents, or fellows.

7 (4) "Medical director" means a physician who is
8 employed or under contract with a clinic and who maintains a
9 full and unencumbered physician license in accordance with
10 chapter 458, chapter 459, chapter 460, or chapter 461.
11 However, if the clinic does not provide services pursuant to
12 the respective physician practices acts listed in this
13 subsection, it is limited to providing health care services
14 pursuant to chapter 457, chapter 484, chapter 486, chapter
15 490, or chapter 491 or part I, part III, part X, part XIII, or
16 part XIV of chapter 468, the clinic may appoint a Florida
17 licensed health care practitioner who does not provide
18 services pursuant to the respective physician practices acts
19 listed in this subsection licensed under that chapter to serve
20 as a clinic director who is responsible for the clinic's
21 activities. A health care practitioner may not serve as the
22 clinic director if the services provided at the clinic are
23 beyond the scope of that practitioner's license, except that a
24 license specified in s. 456.053(3)(b) which provides only
25 services authorized pursuant to s. 456.053(3)(b) may serve as
26 clinic director of an entity providing services as specified
27 in s. 456.053(3)(b).

28 (5) "Mobile clinic" means a movable or detached
29 self-contained health care unit within or from which direct
30 health care services are provided to individuals and which
31 otherwise meets the definition of a clinic in subsection (3).

1 (6) "Portable equipment provider" means an entity that
2 contracts with or employs persons to provide portable
3 equipment to multiple locations performing treatment or
4 diagnostic testing of individuals, that bills third-party
5 payers for those services, and that otherwise meets the
6 definition of a clinic in subsection (3).

7 Section 173. Effective upon becoming a law and
8 applying retroactively to March 1, 2004, section 400.991,
9 Florida Statutes, is amended to read:

10 400.991 License requirements; background screenings;
11 prohibitions.--

12 (1)(a) The requirements of part II of chapter 408
13 apply 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(6), (7), and (10).

19 (b) Each clinic, as defined in s. 400.9905, must be
20 licensed and shall at all times maintain a valid license with
21 the agency. Each clinic location shall be licensed separately
22 regardless of whether the clinic is operated under the same
23 business name or management as another clinic.

24 (c) Each mobile clinic ~~clinics~~ must obtain a separate
25 health care clinic license and must provide to the agency, at
26 least quarterly, their projected street locations to enable
27 the agency to locate and inspect such clinics. Portable
28 equipment providers must obtain a health care clinic license
29 for a single administrative office and are not required to
30 submit quarterly projected street locations.

31

1 (2) The initial clinic license application shall be
2 filed with the agency by all clinics, as defined in s.
3 400.9905, on or before July 1, 2004 ~~March 1, 2004~~. ~~A clinic~~
4 ~~license must be renewed biennially.~~

5 (3) Applicants that submit an application on or before
6 July 1, 2004 ~~March 1, 2004~~, which meets all requirements for
7 initial licensure as specified in this section shall receive a
8 temporary license until the completion of an initial
9 inspection verifying that the applicant meets all requirements
10 in rules authorized by s. 400.9925. However, a clinic engaged
11 in magnetic resonance imaging services may not receive a
12 temporary license unless it presents evidence satisfactory to
13 the agency that such clinic is making a good faith effort and
14 substantial progress in seeking accreditation required under
15 s. 400.9935.

16 ~~(4) Application for an initial clinic license or for~~
17 ~~renewal of an existing license shall be notarized on forms~~
18 ~~furnished by the agency and must be accompanied by the~~
19 ~~appropriate license fee as provided in s. 400.9925. The agency~~
20 ~~shall take final action on an initial license application~~
21 ~~within 60 days after receipt of all required documentation.~~

22 ~~(4)(5)~~ The application shall contain information that
23 includes, but need not be limited to, information pertaining
24 to the name, residence and business address, phone number,
25 social security number, and license number of the medical or
26 clinic director, of the licensed medical providers employed or
27 under contract with the clinic, ~~and of each person who,~~
28 ~~directly or indirectly, owns or controls 5 percent or more of~~
29 ~~an interest in the clinic, or general partners in limited~~
30 ~~liability partnerships.~~

31

1 ~~(5)(6)~~ The applicant must file with the application
2 satisfactory proof that the clinic is in compliance with this
3 part and applicable rules, including:

4 (a) A listing of services to be provided either
5 directly by the applicant or through contractual arrangements
6 with existing providers;

7 (b) The number and discipline of each professional
8 staff member to be employed; and

9 (c) Proof of financial ability to operate. An
10 applicant must demonstrate financial ability to operate a
11 clinic by submitting a balance sheet and an income and expense
12 statement for the first year of operation which provide
13 evidence of the applicant's having sufficient assets, credit,
14 and projected revenues to cover liabilities and expenses. The
15 applicant shall have demonstrated financial ability to operate
16 if the applicant's assets, credit, and projected revenues meet
17 or exceed projected liabilities and expenses. All documents
18 required under this subsection must be prepared in accordance
19 with generally accepted accounting principles, may be in a
20 compilation form, and the financial statement must be signed
21 by a certified public accountant. As an alternative to
22 submitting a balance sheet and an income and expense statement
23 for the first year of operation, the applicant may file a
24 surety bond of at least \$500,000 which guarantees that the
25 clinic will act in full conformity with all legal requirements
26 for operating a clinic, payable to the agency. The agency may
27 adopt rules to specify related requirements for such surety
28 bond.

29 ~~(6)(7)~~ Each health care practitioner at the clinic is
30 subject to the background screening requirements of s.
31

1 ~~408.809. Each applicant for licensure shall comply with the~~
2 ~~following requirements:~~

3 ~~(a) As used in this subsection, the term "applicant"~~
4 ~~means individuals owning or controlling, directly or~~
5 ~~indirectly, 5 percent or more of an interest in a clinic; the~~
6 ~~medical or clinic director, or a similarly titled person who~~
7 ~~is responsible for the day to day operation of the licensed~~
8 ~~clinic; the financial officer or similarly titled individual~~
9 ~~who is responsible for the financial operation of the clinic;~~
10 ~~and licensed medical providers at the clinic.~~

11 ~~(b) Upon receipt of a completed, signed, and dated~~
12 ~~application, the agency shall require background screening of~~
13 ~~the applicant, in accordance with the level 2 standards for~~
14 ~~screening set forth in chapter 435. Proof of compliance with~~
15 ~~the level 2 background screening requirements of chapter 435~~
16 ~~which has been submitted within the previous 5 years in~~
17 ~~compliance with any other health care licensure requirements~~
18 ~~of this state is acceptable in fulfillment of this paragraph.~~

19 ~~(c) Each applicant must submit to the agency, with the~~
20 ~~application, a description and explanation of any exclusions,~~
21 ~~permanent suspensions, or terminations of an applicant from~~
22 ~~the Medicare or Medicaid programs. Proof of compliance with~~
23 ~~the requirements for disclosure of ownership and control~~
24 ~~interest under the Medicaid or Medicare programs may be~~
25 ~~accepted in lieu of this submission. The description and~~
26 ~~explanation may indicate whether such exclusions, suspensions,~~
27 ~~or terminations were voluntary or not voluntary on the part of~~
28 ~~the applicant.~~

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

1 guilty to, any offense prohibited under the level 2 standards
2 for screening set forth in chapter 435, or a violation of
3 insurance fraud under s. 817.234, within the past 5 years. If
4 the applicant has been convicted of an offense prohibited
5 under the level 2 standards or insurance fraud in any
6 jurisdiction, the applicant must show that his or her civil
7 rights have been restored prior to submitting an application.

8 ~~(c) The agency may deny or revoke licensure if the~~
9 ~~applicant has falsely represented any material fact or omitted~~
10 ~~any material fact from the application required by this part.~~

11 ~~(8) Requested information omitted from an application~~
12 ~~for licensure, license renewal, or transfer of ownership must~~
13 ~~be filed with the agency within 21 days after receipt of the~~
14 ~~agency's request for omitted information, or the application~~
15 ~~shall be deemed incomplete and shall be withdrawn from further~~
16 ~~consideration.~~

17 ~~(9) The failure to file a timely renewal application~~
18 ~~shall result in a late fee charged to the facility in an~~
19 ~~amount equal to 50 percent of the current license fee.~~

20 Section 174. Section 400.9915, Florida Statutes, is
21 amended to read:

22 400.9915 Clinic inspections; ~~emergency suspension;~~
23 costs.--

24 ~~(1) Any authorized officer or employee of the agency~~
25 ~~shall make inspections of the clinic as part of the initial~~
26 ~~license application or renewal application. The application~~
27 ~~for a clinic license issued under this part or for a renewal~~
28 ~~license constitutes permission for an appropriate agency~~
29 ~~inspection to verify the information submitted on or in~~
30 ~~connection with the application or renewal.~~

31

1 ~~(2) An authorized officer or employee of the agency~~
2 ~~may make unannounced inspections of clinics licensed pursuant~~
3 ~~to this part as are necessary to determine that the clinic is~~
4 ~~in compliance with this part and with applicable rules. A~~
5 ~~licensed clinic shall allow full and complete access to the~~
6 ~~premises and to billing records or information to any~~
7 ~~representative of the agency who makes an inspection to~~
8 ~~determine compliance with this part and with applicable rules.~~

9 ~~(1)(3)~~ Failure by a clinic licensed under this part to
10 allow full and complete access to the premises and to billing
11 records or information to any representative of the agency who
12 makes a request to inspect the clinic to determine compliance
13 with this part or failure by a clinic to employ a qualified
14 medical director or clinic director constitutes a ground for
15 an action under s. 408.814 ~~emergency suspension of the license~~
16 ~~by the agency pursuant to s. 120.60(6).~~

17 ~~(2)(4)~~ In addition to any administrative fines
18 imposed, the agency may assess a fee equal to the cost of
19 conducting a complaint investigation.

20 Section 175. Section 400.992, Florida Statutes, is
21 repealed.

22 Section 176. Subsections (1) and (3) of section
23 400.9925, Florida Statutes, are amended to read:

24 400.9925 Rulemaking authority; license fees.--

25 (1) The agency shall adopt rules necessary to
26 administer the clinic administration, regulation, and
27 licensure program, including rules pursuant to part II of
28 chapter 408 establishing the specific licensure requirements,
29 procedures, forms, and fees. It shall adopt rules establishing
30 a procedure for the biennial renewal of licenses. The agency
31 may issue initial licenses for less than the full 2-year

1 | period by charging a prorated licensure fee and specifying a
2 | different renewal date than would otherwise be required for
3 | biennial licensure. The rules shall specify the expiration
4 | dates of licenses, the process of tracking compliance with
5 | financial responsibility requirements, and any other
6 | conditions of renewal required by law or rule.

7 | (3) In accordance with s. 408.805, an applicant or
8 | licensee shall pay a fee for each license application
9 | submitted under this part and part II of chapter 408. The
10 | amount of the fee shall be established by rule and may not
11 | exceed \$2,000 per biennium. ~~License application and renewal~~
12 | ~~fees must be reasonably calculated by the agency to cover its~~
13 | ~~costs in carrying out its responsibilities under this part,~~
14 | ~~including the cost of licensure, inspection, and regulation of~~
15 | ~~clinics, and must be of such amount that the total fees~~
16 | ~~collected do not exceed the cost of administering and~~
17 | ~~enforcing compliance with this part. Clinic licensure fees are~~
18 | ~~nonrefundable and may not exceed \$2,000. The agency shall~~
19 | ~~adjust the license fee annually by not more than the change in~~
20 | ~~the Consumer Price Index based on the 12 months immediately~~
21 | ~~preceding the increase. All fees collected under this part~~
22 | ~~must be deposited in the Health Care Trust Fund for the~~
23 | ~~administration of this part.~~

24 | Section 177. Section 400.993, Florida Statutes, is
25 | amended to read:

26 | 400.993 Reporting of unlicensed clinics; ~~penalties;~~
27 | ~~finis; verification of licensure status.--~~

28 | ~~(1) It is unlawful to own, operate, or maintain a~~
29 | ~~clinic without obtaining a license under this part.~~

30 | ~~(2) Any person who owns, operates, or maintains an~~
31 | ~~unlicensed clinic commits a felony of the third degree,~~

1 ~~punishable as provided in s. 775.082, s. 775.083, or s.~~
2 ~~775.084. Each day of continued operation is a separate~~
3 ~~offense.~~

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

9 ~~(4) Any person who owns, operates, or maintains an~~
10 ~~unlicensed clinic due to a change in this part or a~~
11 ~~modification in agency rules within 6 months after the~~
12 ~~effective date of such change or modification and who, within~~
13 ~~10 working days after receiving notification from the agency,~~
14 ~~fails to cease operation or apply for a license under this~~
15 ~~part commits a felony of the third degree, punishable as~~
16 ~~provided in s. 775.082, s. 775.083, or s. 775.084. Each day of~~
17 ~~continued operation is a separate offense.~~

18 ~~(5) Any clinic that fails to cease operation after~~
19 ~~agency notification may be fined for each day of noncompliance~~
20 ~~pursuant to this part.~~

21 ~~(6) When a person has an interest in more than one~~
22 ~~clinic, and fails to obtain a license for any one of these~~
23 ~~clinics, the agency may revoke the license, impose a~~
24 ~~moratorium, or impose a fine pursuant to this part on any or~~
25 ~~all of the licensed clinics until such time as the unlicensed~~
26 ~~clinic is licensed or ceases operation.~~

27 ~~(7) Any person aware of the operation of an unlicensed~~
28 ~~clinic must report that facility to the agency.~~

29 ~~(8) In addition to the requirements of part II of~~
30 ~~chapter 408, any health care provider who is aware of the~~
31 ~~operation of an unlicensed clinic shall report that facility~~

1 to the agency. Failure to report a clinic that the provider
2 knows or has reasonable cause to suspect is unlicensed shall
3 be reported to the provider's licensing board.

4 ~~(9) The agency may not issue a license to a clinic~~
5 ~~that has any unpaid fines assessed under this part.~~

6 Section 178. Section 400.9935, Florida Statutes, is
7 amended to read:

8 400.9935 Clinic responsibilities.--

9 (1) Each clinic shall appoint a medical director or
10 clinic director who shall agree in writing to accept legal
11 responsibility for the following activities on behalf of the
12 clinic. The medical director or the clinic director shall:

13 (a) Have signs identifying the medical director or
14 clinic director posted in a conspicuous location within the
15 clinic readily visible to all patients.

16 (b) Ensure that all practitioners providing health
17 care services or supplies to patients maintain a current
18 active and unencumbered Florida license.

19 (c) Review any patient referral contracts or
20 agreements executed by the clinic.

21 (d) Ensure that all health care practitioners at the
22 clinic have active appropriate certification or licensure for
23 the level of care being provided.

24 (e) Serve as the clinic records owner as defined in s.
25 456.057.

26 (f) Ensure compliance with the recordkeeping, office
27 surgery, and adverse incident reporting requirements of
28 chapter 456, the respective practice acts, and rules adopted
29 under this part and part II of chapter 408.

30 (g) Conduct systematic reviews of clinic billings to
31 ensure that the billings are not fraudulent or unlawful. Upon

1 | discovery of an unlawful charge, the medical director or
2 | clinic director shall take immediate corrective action.

3 | ~~(2) Any business that becomes a clinic after~~
4 | ~~commencing operations must, within 5 days after becoming a~~
5 | ~~clinic, file a license application under this part and shall~~
6 | ~~be subject to all provisions of this part applicable to a~~
7 | ~~clinic.~~

8 | (2)~~(3)~~ Any contract to serve as a medical director or
9 | a clinic director entered into or renewed by a physician or a
10 | licensed health care practitioner in violation of this part is
11 | void as contrary to public policy. This subsection shall apply
12 | to contracts entered into or renewed on or after March 1,
13 | 2004.

14 | (3)~~(4)~~ All charges or reimbursement claims made by or
15 | on behalf of a clinic that is required to be licensed under
16 | this part, but that is not so licensed, or that is otherwise
17 | operating in violation of this part, are unlawful charges, and
18 | therefore are noncompensable and unenforceable.

19 | (4)~~(5)~~ Any person establishing, operating, or managing
20 | an unlicensed clinic otherwise required to be licensed under
21 | this part, or any person who knowingly files a false or
22 | misleading license application or license renewal application,
23 | or false or misleading information related to such application
24 | or department rule, commits a felony of the third degree,
25 | punishable as provided in s. 775.082, s. 775.083, or s.
26 | 775.084.

27 | (5)~~(6)~~ Any licensed health care provider who violates
28 | this part is subject to discipline in accordance with this
29 | chapter and his or her respective practice act.

30 | ~~(7) The agency may fine, or suspend or revoke the~~
31 | ~~license of, any clinic licensed under this part for operating~~

1 ~~in violation of the requirements of this part or the rules~~
2 ~~adopted by the agency.~~

3 ~~(8) The agency shall investigate allegations of~~
4 ~~noncompliance with this part and the rules adopted under this~~
5 ~~part.~~

6 ~~(6)(9)~~ Any person or entity providing health care
7 services which is not a clinic, as defined under s. 400.9905,
8 may voluntarily apply for a certificate of exemption from
9 licensure under its exempt status with the agency on a form
10 that sets forth its name or names and addresses, a statement
11 of the reasons why it cannot be defined as a clinic, and other
12 information deemed necessary by the agency. An exemption is
13 not transferable. The agency may charge each applicant for a
14 certificate of exemption \$100, or actual cost, whichever is
15 less, for processing the certificate.

16 ~~(10) The clinic shall display its license in a~~
17 ~~conspicuous location within the clinic readily visible to all~~
18 ~~patients.~~

19 ~~(7)(11)~~(a) Each clinic engaged in magnetic resonance
20 imaging services must be accredited by the Joint Commission on
21 Accreditation of Healthcare Organizations, the American
22 College of Radiology, or the Accreditation Association for
23 Ambulatory Health Care, within 1 year after licensure.
24 However, a clinic may request a single, 6-month extension if
25 it provides evidence to the agency establishing that, for good
26 cause shown, such clinic can not be accredited within 1 year
27 after licensure, and that such accreditation will be completed
28 within the 6-month extension. After obtaining accreditation as
29 required by this subsection, each such clinic must maintain
30 accreditation as a condition of renewal of its license.

31

1 (b) The agency may deny ~~disallow~~ the application or
2 revoke the license of any entity formed for the purpose of
3 avoiding compliance with the accreditation provisions of this
4 subsection and whose principals were previously principals of
5 an entity that was unable to meet the accreditation
6 requirements within the specified timeframes. The agency may
7 adopt rules as to the accreditation of magnetic resonance
8 imaging clinics.

9 ~~(8)(12)~~ The agency shall give full faith and credit
10 pertaining to any past variance and waiver granted to a
11 magnetic resonance imaging clinic from rule 64-2002, Florida
12 Administrative Code, by the Department of Health, until
13 September 2004. After that date, such clinic must request a
14 variance and waiver from the agency under s. 120.542.

15 Section 179. Sections 400.994 and 400.9945, Florida
16 Statutes, are repealed.

17 Section 180. Section 400.995, Florida Statutes, is
18 amended to read:

19 400.995 ~~Agency~~ Administrative finer penalties.--

20 (1) The agency may deny the application for a license
21 renewal or revoke or suspend the license and impose
22 administrative finer penalties ~~against clinics~~ of up to \$5,000
23 per violation for violations of the requirements of this part
24 or agency rules. In determining if a penalty is to be imposed
25 and in fixing the amount of the fine, the agency shall
26 consider the following factors:

27 (a) The gravity of the violation, including the
28 probability that death or serious physical or emotional harm
29 to a patient will result or has resulted, the severity of the
30 action or potential harm, and the extent to which the
31 provisions of the applicable laws or rules were violated.

1 (b) Actions taken by the owner, medical director, or
2 clinic director to correct violations.

3 (c) Any previous violations.

4 (d) The financial benefit to the clinic of committing
5 or continuing the violation.

6 ~~(2) Each day of continuing violation after the date~~
7 ~~fixed for termination of the violation, as ordered by the~~
8 ~~agency, constitutes an additional, separate, and distinct~~
9 ~~violation.~~

10 ~~(2)(3)~~ Any action taken to correct a violation shall
11 be documented in writing by the owner, medical director, or
12 clinic director of the clinic and verified through followup
13 visits by agency personnel. The agency may impose a fine and,
14 in the case of an owner-operated clinic, revoke or deny a
15 clinic's license when a clinic medical director or clinic
16 director knowingly fraudulently misrepresents actions taken to
17 correct a violation.

18 ~~(4) For fines that are upheld following administrative~~
19 ~~or judicial review, the violator shall pay the fine, plus~~
20 ~~interest at the rate as specified in s. 55.03, for each day~~
21 ~~beyond the date set by the agency for payment of the fine.~~

22 ~~(5) Any unlicensed clinic that continues to operate~~
23 ~~after agency notification is subject to a \$1,000 fine per day.~~

24 ~~(3)(6)~~ Any licensed clinic whose owner, medical
25 director, or clinic director concurrently operates an
26 unlicensed clinic shall be subject to an administrative fine
27 of \$5,000 per day.

28 ~~(7) Any clinic whose owner fails to apply for a~~
29 ~~change of ownership license in accordance with s. 400.992 and~~
30 ~~operates the clinic under the new ownership is subject to a~~
31 ~~fine of \$5,000.~~

1 ~~(4)(8)~~ The agency, as an alternative to or in
2 conjunction with an administrative action against a clinic for
3 violations of this part, part II of chapter 408, and adopted
4 rules, shall make a reasonable attempt to discuss each
5 violation and recommended corrective action with the owner,
6 medical director, or clinic director of the clinic, prior to
7 written notification. The agency, instead of fixing a period
8 within which the clinic shall enter into compliance with
9 standards, may request a plan of corrective action from the
10 clinic which demonstrates a good faith effort to remedy each
11 violation by a specific date, subject to the approval of the
12 agency.

13 ~~(9) Administrative fines paid by any clinic under this~~
14 ~~section shall be deposited into the Health Care Trust Fund.~~

15 (5) If the agency issues a notice of intent to deny a
16 license application after a temporary license has been issued
17 pursuant to s. 400.991(3), the temporary license shall expire
18 on the date of the notice and may not be extended during any
19 proceeding for administrative or judicial review pursuant to
20 chapter 120.

21 Section 181. The agency shall make refunds to
22 applicants that submitted their health care clinic licensure
23 fees and applications but were subsequently exempted from
24 licensure by this act as follows:

25 (1) Seventy-five percent of the application fee if the
26 temporary license has not been issued;

27 (2) Fifty percent of the application fee if the
28 temporary license has been issued but the inspection has not
29 been completed; and

30 (3) No refund if the inspection has been completed.
31

1 Section 182. Any person or entity defined as a
2 "clinic" under section 400.9905, Florida Statutes, shall not
3 be in violation of part XIII of chapter 400, Florida Statutes,
4 due to failure to apply for a clinic license by March 1, 2004,
5 as previously required by section 400.991, Florida Statutes.
6 Payment to any such person or entity by an insurer or other
7 person liable for payment to such person or entity may not be
8 denied on the grounds that the person or entity failed to
9 apply for or obtain a clinic license before July 1, 2004. This
10 section is contingent upon Senate Bill 2380 or similar
11 legislation becoming law.

12 Section 183. Paragraph (u) is added to subsection (3)
13 of section 408.036, Florida Statutes, to read:

14 408.036 Projects subject to review; exemptions.--

15 (3) EXEMPTIONS.--Upon request, the following projects
16 are subject to exemption from the provisions of subsection
17 (1):

18 (u) For the addition of skilled nursing facility beds
19 as provided in this paragraph. Notwithstanding the moratorium
20 on community nursing home beds authorized in chapter 2001-45,
21 Laws of Florida, the agency may grant an exemption for:

22 1. The addition of skilled nursing facility beds
23 licensed under part II of chapter 400 to a licensed skilled
24 nursing facility located in a county having up to 50,000
25 residents, in a number that may not exceed 10 total beds or 10
26 percent of the licensed capacity of the facility, whichever is
27 greater, if:

28 a. Occupancy for the prior 12-month period at the
29 facility or in the applicable subdistrict met or exceeded 94
30 percent, and the facility has had no confirmed complaints or a
31 conditional license for the prior 30-month period; or

1 b. For a facility that has been licensed for less than
2 24 months, facility occupancy exceeded 94 percent for the most
3 recent 6-month period and the facility has not had a confirmed
4 complaint or a conditional license since its initial
5 licensure.

6 2. The new construction of a skilled nursing facility
7 with up to 10 beds in a county having up to 50,000 residents
8 if there are no licensed skilled nursing facility beds in that
9 county.

10 Section 184. Section 408.831, Florida Statutes, is
11 amended to read:

12 408.831 Denial, ~~suspension~~, or revocation of a
13 license, registration, certificate, or application.--

14 (1) In addition to any other remedies provided by law,
15 the agency may deny each application or ~~suspend or~~ revoke each
16 license, registration, or certificate of entities regulated or
17 licensed by it:

18 (a) If the applicant, licensee, registrant, or
19 certificateholder, or, in the case of a corporation,
20 partnership, or other business entity, if any affiliated
21 business entity, officer, director, agent, or managing
22 employee of that business entity or any affiliated person,
23 partner, or shareholder having an ownership interest equal to
24 5 percent or greater in that business entity, has failed to
25 pay all outstanding fines, liens, or overpayments assessed by
26 final order of the agency or final order of the Centers for
27 Medicare and Medicaid Services, not subject to further appeal,
28 unless a repayment plan is approved by the agency; or

29 (b) For failure to comply with any repayment plan.

30 (2) In reviewing any application requesting a change
31 of ownership or change of the licensee, registrant, or

1 certificateholder, the transferor shall, prior to agency
2 approval of the change, repay or make arrangements to repay
3 any amounts owed to the agency. Should the transferor fail to
4 repay or make arrangements to repay the amounts owed to the
5 agency, the issuance of a license, registration, or
6 certificate to the transferee shall be delayed until repayment
7 or until arrangements for repayment are made.

8 (3) This section provides standards of enforcement
9 applicable to all entities licensed or regulated by the Agency
10 for Health Care Administration. This section controls over any
11 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391,
12 393, 394, 395, 400, 408, 468, 483, ~~and~~ 641, and 765 or rules
13 adopted pursuant to those chapters.

14 Section 185. Subsections (9) and (10) of section
15 440.102, Florida Statutes, are amended to read:

16 440.102 Drug-free workplace program requirements.--The
17 following provisions apply to a drug-free workplace program
18 implemented pursuant to law or to rules adopted by the Agency
19 for Health Care Administration:

20 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--

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

27 (b)(a) A laboratory may analyze initial or
28 confirmation test specimens only if:

29 1. The laboratory obtains a license under the
30 requirements of part II of chapter 408 and s. 112.0455(17).
31 Each applicant for licensure must comply with all requirements

1 of part II of chapter 408, with the exception of s.
2 408.810(5)-(10). ~~is licensed and approved by the Agency for~~
3 ~~Health Care Administration using criteria established by the~~
4 ~~United States Department of Health and Human Services as~~
5 ~~general guidelines for modeling the state drug testing program~~
6 ~~pursuant to this section or the laboratory is certified by the~~
7 ~~United States Department of Health and Human Services.~~

8 2. The laboratory has written procedures to ensure the
9 chain of custody.

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

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

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

19 c. Security measures implemented by the testing
20 laboratory to preclude adulteration of specimens and drug test
21 results.

22 d. Other necessary and proper actions taken to ensure
23 reliable and accurate drug test results.

24 (c)(b) A laboratory shall disclose to the medical
25 review officer a written positive confirmed test result report
26 within 7 working days after receipt of the sample. All
27 laboratory reports of a drug test result must, at a minimum,
28 state:

29 1. The name and address of the laboratory that
30 performed the test and the positive identification of the
31 person tested.

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

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

5 4. The type of tests conducted for both initial tests
6 and confirmation tests and the minimum cutoff levels of the
7 tests.

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

11
12 A report must not disclose the presence or absence of any drug
13 other than a specific drug and its metabolites listed pursuant
14 to this section.

15 ~~(d)(e)~~ The laboratory shall submit to the Agency for
16 Health Care Administration a monthly report with statistical
17 information regarding the testing of employees and job
18 applicants. The report must include information on the methods
19 of analysis conducted, the drugs tested for, the number of
20 positive and negative results for both initial tests and
21 confirmation tests, and any other information deemed
22 appropriate by the Agency for Health Care Administration. A
23 monthly report must not identify specific employees or job
24 applicants.

25 (10) RULES.--The Agency for Health Care Administration
26 shall adopt rules pursuant to s. 112.0455, part II of chapter
27 408, and criteria established by the United States Department
28 of Health and Human Services as general guidelines for
29 modeling drug-free workplace laboratories ~~the state~~
30 ~~drug testing program~~, concerning, but not limited to:

1 (a) Standards for licensing drug-testing laboratories
2 and denial ~~suspension~~ and revocation of such licenses.

3 (b) Urine, hair, blood, and other body specimens and
4 minimum specimen amounts that are appropriate for drug
5 testing.

6 (c) Methods of analysis and procedures to ensure
7 reliable drug-testing results, including standards for initial
8 tests and confirmation tests.

9 (d) Minimum cutoff detection levels for each drug or
10 metabolites of such drug for the purposes of determining a
11 positive test result.

12 (e) Chain-of-custody procedures to ensure proper
13 identification, labeling, and handling of specimens tested.

14 (f) Retention, storage, and transportation procedures
15 to ensure reliable results on confirmation tests and retests.

16 Section 186. Subsection (2) of section 468.711,
17 Florida Statutes, is amended to read:

18 468.711 Renewal of license; continuing education.--

19 (2) The board may, by rule, prescribe continuing
20 education requirements, not to exceed 24 hours biennially.
21 The criteria for continuing education shall be approved by the
22 board and shall include 4 hours in ~~standard first aid and~~
23 cardiovascular pulmonary resuscitation from the American Red
24 Cross or equivalent training as determined by the board.

25 Section 187. Section 468.723, Florida Statutes, is
26 amended to read:

27 468.723 Exemptions.--Nothing in this part shall be
28 construed as preventing or restricting:

29 (1) The professional practice of a licensee of the
30 department who is acting within the scope of such practice.

31

1 (2) A student athletic trainer acting under the direct
2 supervision of a licensed athletic trainer.

3 ~~(3) A person employed as a teacher apprentice trainer~~
4 ~~I, a teacher apprentice trainer II, or a teacher athletic~~
5 ~~trainer under s. 1012.46.~~

6 (3)~~(4)~~ A person from administering standard first aid
7 treatment to an athlete.

8 (4)~~(5)~~ A person licensed under chapter 548, provided
9 such person is acting within the scope of such license.

10 (5)~~(6)~~ A person providing personal training
11 instruction for exercise, aerobics, or weightlifting, if the
12 person does not represent himself or herself as able to
13 provide "athletic trainer" services and if any recognition or
14 treatment of injuries is limited to the provision of first
15 aid.

16 Section 188. Section 1012.46, Florida Statutes, is
17 amended to read:

18 1012.46 Athletic trainers.--

19 (1) School districts may establish and implement an
20 athletic injuries prevention and treatment program. Central to
21 this program should be the employment and availability of
22 persons trained in the prevention and treatment of physical
23 injuries which may occur during athletic activities. The
24 program should reflect opportunities for progressive
25 advancement and compensation in employment as provided in
26 subsection (2) and meet certain other minimum standards
27 developed by the Department of Education. The goal of the
28 Legislature is to have school districts employ and have
29 available a full-time ~~teacher~~ athletic trainer in each high
30 school in the state.
31

1 (2) To the extent practicable, a school district
2 program should include the following employment classification
3 and advancement scheme:

4 (a) First responder.--To qualify as a first responder,
5 a person must possess a professional, temporary, part-time,
6 adjunct, or substitute certificate pursuant to s. 1012.56, be
7 certified in cardiopulmonary resuscitation, first aid, and
8 have 15 semester hours in courses such as care and prevention
9 of athletic injuries, anatomy, physiology, nutrition,
10 counseling, and other similar courses approved by the
11 Commissioner of Education. This person may only administer
12 first aid and similar care and may not hold himself or herself
13 out to the school district or public as an athletic trainer
14 pursuant to part XIII of chapter 468.

15 (b) ~~Teacher~~ Athletic trainer.--To qualify as an a
16 ~~teacher~~ athletic trainer, a person must be licensed as
17 required by part XIII of chapter 468 and may be used by the
18 school district as ~~possess~~ a professional, temporary,
19 part-time, adjunct, or substitute teacher provided such person
20 holds a certificate pursuant to s. 1012.35, s. 1012.56 or s.
21 1012.57, ~~and be licensed as required by part XIII of chapter~~
22 ~~468.~~

23 Section 189. Subsection (3) is added to section
24 483.035, Florida Statutes, to read:

25 483.035 Clinical laboratories operated by
26 practitioners for exclusive use; licensure and regulation.--

27 (3) The requirements of part II of chapter 408 apply
28 to the provision of services that necessitate licensure
29 pursuant to this part and part II of chapter 408 and to
30 entities licensed by or applying for such licensure from the
31 Agency for Health Care Administration pursuant to this part;

1 however, an applicant for licensure is exempt from s.
2 408.810(5)-(10).

3 Section 190. Subsection (1) of section 483.051,
4 Florida Statutes, is amended to read:

5 483.051 Powers and duties of the agency.--The agency
6 shall adopt rules to implement this part, which rules must
7 include, but are not limited to, the following:

8 (1) LICENSING; QUALIFICATIONS.--The agency shall
9 provide for biennial licensure of all clinical laboratories
10 meeting the requirements of this part and shall prescribe the
11 qualifications necessary for such licensure. ~~A license issued~~
12 ~~for operating a clinical laboratory, unless sooner suspended~~
13 ~~or revoked, expires on the date set forth by the agency on the~~
14 ~~face of the license.~~

15 Section 191. Section 483.061, Florida Statutes, is
16 amended to read:

17 483.061 Inspection of clinical laboratories.--

18 (1) The agency shall ensure that each clinical
19 laboratory subject to this part is inspected either onsite or
20 offsite when deemed necessary by the agency, but at least
21 every 2 years, for the purpose of evaluating the operation,
22 supervision, and procedures of the facility to ensure
23 compliance with this part. Collection stations and branch
24 offices may be inspected either onsite or offsite, when deemed
25 necessary by the agency. ~~The agency may conduct or cause to be~~
26 ~~conducted the following announced or unannounced inspections~~
27 ~~at any reasonable time:~~

28 ~~(a) An inspection conducted at the direction of the~~
29 ~~federal Health Care Financing Administration.~~

30 ~~(b) A licensure inspection.~~

31 ~~(c) A validation inspection.~~

1 ~~(d) A complaint investigation, including a full~~
2 ~~licensure investigation with a review of all licensure~~
3 ~~standards as outlined in rule. Complaints received by the~~
4 ~~agency from individuals, organizations, or other sources are~~
5 ~~subject to review and investigation by the agency. If a~~
6 complaint has been filed against a laboratory or if a
7 laboratory has a substantial licensure deficiency, the agency
8 may inspect the laboratory annually or as the agency considers
9 necessary.

10
11 However, for laboratories operated under s. 483.035, biennial
12 licensure inspections shall be scheduled so as to cause the
13 least disruption to the practitioner's scheduled patients.

14 ~~(2) The right of entry and inspection is extended to~~
15 ~~any premises that is maintained as a laboratory without a~~
16 ~~license, but such entry or inspection may not be made without~~
17 ~~the permission of the owner or person in charge of the~~
18 ~~laboratory, unless an inspection warrant as defined in s.~~
19 ~~933.20 is first obtained.~~

20 ~~(2)(3)~~ The agency may ~~shall~~ inspect an out-of-state
21 clinical laboratory under this section at the expense of the
22 out-of-state clinical laboratory to determine whether the
23 laboratory meets the requirements of this part and part II of
24 chapter 408.

25 ~~(3)(4)~~ The agency shall accept, in lieu of its own
26 periodic inspections for licensure, the survey of or
27 inspection by private accrediting organizations that perform
28 inspections of clinical laboratories accredited by such
29 organizations, including postinspection activities required by
30 the agency.

31

1 (a) The agency shall accept inspections performed by
2 such organizations if the accreditation is not provisional, if
3 such organizations perform postinspection activities required
4 by the agency and provide the agency with all necessary
5 inspection and postinspection reports and information
6 necessary for enforcement, if such organizations apply
7 standards equal to or exceeding standards established and
8 approved by the agency, and if such accrediting organizations
9 are approved by the federal Health Care Financing
10 Administration to perform such inspections.

11 (b) The agency may conduct complaint investigations
12 made against laboratories inspected by accrediting
13 organizations.

14 (c) The agency may conduct sample validation
15 inspections of laboratories inspected by accrediting
16 organizations to evaluate the accreditation process used by an
17 accrediting organization.

18 (d) The agency may conduct a full inspection if an
19 accrediting survey has not been conducted within the previous
20 24 months, and the laboratory must pay the appropriate
21 inspection fee under s. 483.172.

22 (e) The agency shall develop, and adopt, by rule,
23 criteria for accepting inspection and postinspection reports
24 of accrediting organizations in lieu of conducting a state
25 licensure inspection.

26 Section 192. Section 483.091, Florida Statutes, is
27 amended to read:

28 483.091 Clinical laboratory license.--~~A person may not~~
29 ~~conduct, maintain, or operate a clinical laboratory in this~~
30 ~~state, except a laboratory that is exempt under s. 483.031,~~
31 ~~unless the clinical laboratory has obtained a license from the~~

1 ~~agency.~~ A clinical laboratory may not send a specimen drawn
2 within this state to any clinical laboratory outside the state
3 for examination unless the out-of-state laboratory has
4 obtained a license from the agency. ~~A license is valid only~~
5 ~~for the person or persons to whom it is issued and may not be~~
6 ~~sold, assigned, or transferred, voluntarily or involuntarily,~~
7 ~~and is not valid for any premises other than those for which~~
8 ~~the license is issued.~~ However, A new license may be secured
9 for a the new location before the actual change, if the
10 contemplated change complies with this part and the rules
11 adopted under this part. ~~Application for a new clinical~~
12 ~~laboratory license must be made 60 days before a change in the~~
13 ~~ownership of the clinical laboratory.~~

14 Section 193. Section 483.101, Florida Statutes, is
15 amended to read:

16 483.101 Application for clinical laboratory license.--

17 ~~(1) An application for a clinical laboratory license~~
18 ~~must be made under oath by the owner or director of the~~
19 ~~clinical laboratory or by the public official responsible for~~
20 ~~operating a state, municipal, or county clinical laboratory or~~
21 ~~institution that contains a clinical laboratory, upon forms~~
22 ~~provided by the agency.~~

23 ~~(2) Each applicant for licensure must comply with the~~
24 ~~following requirements:~~

25 ~~(a) Upon receipt of a completed, signed, and dated~~
26 ~~application, the agency shall require background screening, in~~
27 ~~accordance with the level 2 standards for screening set forth~~
28 ~~in chapter 435, of the managing director or other similarly~~
29 ~~titled individual who is responsible for the daily operation~~
30 ~~of the laboratory and of the financial officer, or other~~
31 ~~similarly titled individual who is responsible for the~~

1 ~~financial operation of the laboratory, including billings for~~
2 ~~patient services. The applicant must comply with the~~
3 ~~procedures for level 2 background screening as set forth in~~
4 ~~chapter 435, as well as the requirements of s. 435.03(3).~~

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

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

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

1 ~~from the Federal Bureau of Investigation. However, the person~~
2 ~~may not continue to serve if the report indicates any~~
3 ~~violation of background screening standards and a~~
4 ~~disqualification exemption has not been requested of and~~
5 ~~granted by the agency as set forth in chapter 435.~~

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

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

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

8 ~~(h) The agency may deny or revoke licensure if the~~
9 ~~applicant:~~

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

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

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

19 ~~(3) A license must be issued authorizing the~~
20 ~~performance of one or more clinical laboratory procedures or~~
21 ~~one or more tests on each specialty or subspecialty. A~~
22 ~~separate license is required of all laboratories maintained on~~
23 ~~separate premises even if the laboratories are operated under~~
24 ~~the same management. Upon receipt of a request for an~~
25 ~~application for a clinical laboratory license, the agency~~
26 ~~shall provide to the applicant a copy of the rules relating to~~
27 ~~licensure and operations applicable to the laboratory for~~
28 ~~which licensure is sought.~~

29 Section 194. Section 483.111, Florida Statutes, is
30 amended to read:

31

1 483.111 Limitations on licensure.--A license may be
2 issued to a clinical laboratory to perform only those clinical
3 laboratory procedures and tests that are within the
4 specialties or subspecialties in which the clinical laboratory
5 personnel are qualified. A license may not be issued unless
6 the agency determines that the clinical laboratory is
7 adequately staffed and equipped to operate in conformity with
8 the requirements of this part, part II of chapter 408, and
9 applicable ~~the rules adopted under this part.~~

10 Section 195. Section 483.131, Florida Statutes, is
11 repealed.

12 Section 196. Section 483.172, Florida Statutes, is
13 amended to read:

14 483.172 License fees.--

15 (1) In accordance with s. 408.805, an applicant or
16 licensee shall pay a fee for each license application
17 submitted under this part and part II of chapter 408. The
18 ~~agency shall collect fees for all licenses issued under this~~
19 ~~part. Each fee is due at the time of application and must be~~
20 ~~payable to the agency to be deposited in the Health Care Trust~~
21 ~~Fund administered by the agency.~~

22 (2) The biennial license fee schedule is as follows,
23 unless modified by rule:

24 (a) If a laboratory performs not more than 2,000 tests
25 annually, the fee is \$400.

26 (b) If a laboratory performs not more than 3
27 categories of procedures with a total annual volume of more
28 than 2,000 but no more than 10,000 tests, the license fee is
29 \$965.

30
31

1 (c) If a laboratory performs at least 4 categories of
2 procedures with a total annual volume of not more than 10,000
3 tests, the license fee is \$1,294.

4 (d) If a laboratory performs not more than 3
5 categories of procedures with a total annual volume of more
6 than 10,000 but not more than 25,000 tests, the license fee is
7 \$1,592.

8 (e) If a laboratory performs at least 4 categories of
9 procedures with a total annual volume of more than 10,000 but
10 not more than 25,000 tests, the license fee is \$2,103.

11 (f) If a laboratory performs a total of more than
12 25,000 but not more than 50,000 tests annually, the license
13 fee is \$2,364.

14 (g) If a laboratory performs a total of more than
15 50,000 but not more than 75,000 tests annually, the license
16 fee is \$2,625.

17 (h) If a laboratory performs a total of more than
18 75,000 but not more than 100,000 tests annually, the license
19 fee is \$2,886.

20 (i) If a laboratory performs a total of more than
21 100,000 but not more than 500,000 tests annually, the license
22 fee is \$3,397.

23 (j) If a laboratory performs a total of more than
24 500,000 but not more than 1 million tests annually, the
25 license fee is \$3,658.

26 (k) If a laboratory performs a total of more than 1
27 million tests annually, the license fee is \$3,919.

28 (3) The agency shall assess a biennial fee of \$100 for
29 a certificate of exemption and a \$100 license fee for
30 facilities surveyed by an approved accrediting organization.
31

1 Section 197. Section 483.201, Florida Statutes, is
2 amended to read:

3 483.201 Grounds for disciplinary action against
4 clinical laboratories.--In addition to the requirements of
5 part II of chapter 408, the following acts constitute grounds
6 for which a disciplinary action specified in s. 483.221 may be
7 taken against a clinical laboratory:

8 ~~(1) Making a fraudulent statement on an application~~
9 ~~for a clinical laboratory license or any other document~~
10 ~~required by the agency.~~

11 (1)~~(2)~~ Permitting unauthorized persons to perform
12 technical procedures or to issue reports.

13 (2)~~(3)~~ Demonstrating incompetence or making consistent
14 errors in the performance of clinical laboratory examinations
15 and procedures or erroneous reporting.

16 (3)~~(4)~~ Performing a test and rendering a report
17 thereon to a person not authorized by law to receive such
18 services.

19 (4)~~(5)~~ Knowingly having professional connection with
20 or knowingly lending the use of the name of the licensed
21 clinical laboratory or its director to an unlicensed clinical
22 laboratory.

23 (5)~~(6)~~ Violating or aiding and abetting in the
24 violation of any provision of this part or the rules adopted
25 under this part.

26 (6)~~(7)~~ Failing to file any report required by the
27 provisions of this part or the rules adopted under this part.

28 (7)~~(8)~~ Reporting a test result for a clinical specimen
29 if the test was not performed on the clinical specimen.

30 (8)~~(9)~~ Performing and reporting tests in a specialty
31 or subspecialty in which the laboratory is not licensed.

1 ~~(9)(10)~~ Knowingly advertising false services or
2 credentials.

3 ~~(10)(11)~~ Failing to correct deficiencies within the
4 time required by the agency.

5 Section 198. Section 483.221, Florida Statutes, is
6 amended to read:

7 483.221 Administrative fines ~~penalties~~.--

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

15 ~~(2)(b)~~ In determining the penalty to be imposed for a
16 violation, as provided in subsection (1) ~~paragraph (a)~~, the
17 following factors must be considered:

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

23 ~~(b)2-~~ Actions taken by the licensee to correct the
24 violation or to remedy complaints.

25 ~~(c)3-~~ Any previous violation by the licensee.

26 ~~(d)4-~~ The financial benefit to the licensee of
27 committing or continuing the violation.

28 ~~(c)~~ ~~All amounts collected under this section must be~~
29 ~~deposited into the Health Care Trust Fund administered by the~~
30 ~~agency.~~

31

1 ~~(2) The agency may issue an emergency order~~
2 ~~immediately suspending, revoking, annulling, or limiting a~~
3 ~~license if it determines that any condition in the licensed~~
4 ~~facility presents a clear and present danger to public health~~
5 ~~or safety.~~

6 Section 199. Section 483.23, Florida Statutes, is
7 amended to read:

8 483.23 Offenses; criminal penalties.--

9 (1)(a) It is unlawful for any person to:

10 ~~1. Operate, maintain, direct, or engage in the~~
11 ~~business of operating a clinical laboratory unless she or he~~
12 ~~has obtained a clinical laboratory license from the agency or~~
13 ~~is exempt under s. 483.031.~~

14 ~~1.2.~~ Conduct, maintain, or operate a clinical
15 laboratory, other than an exempt laboratory or a laboratory
16 operated under s. 483.035, unless the clinical laboratory is
17 under the direct and responsible supervision and direction of
18 a person licensed under part III of this chapter.

19 ~~2.3.~~ Allow any person other than an individual
20 licensed under part III of this chapter to perform clinical
21 laboratory procedures, except in the operation of a laboratory
22 exempt under s. 483.031 or a laboratory operated under s.
23 483.035.

24 ~~3.4.~~ Violate or aid and abet in the violation of any
25 provision of this part or the rules adopted under this part.

26 (b) The performance of any act specified in paragraph
27 (a) constitutes a misdemeanor of the second degree, punishable
28 as provided in s. 775.082 or s. 775.083.

29 (2) Any use or attempted use of a forged license under
30 this part or part ~~IV~~ III of this chapter constitutes the crime
31 of forgery.

1 Section 200. Section 483.25, Florida Statutes, is
2 repealed.

3 Section 201. Section 483.291, Florida Statutes, is
4 amended to read:

5 483.291 Powers and duties of the agency; rules.--The
6 agency shall adopt rules to implement this part and part II of
7 chapter 408, which rules must include the following:

8 (1) LICENSING STANDARDS.--The agency ~~shall license all~~
9 ~~multiphasic health testing centers meeting the requirements of~~
10 ~~this part and~~ shall prescribe standards necessary for
11 licensure.

12 (2) FEES.--In accordance with s. 408.805, an applicant
13 or licensee shall pay a fee for each license application
14 submitted under this part and part II of chapter 408. ~~The~~
15 ~~agency shall establish annual fees, which shall be reasonable~~
16 ~~in amount, for licensing of centers. The fees must be~~
17 ~~sufficient in amount to cover the cost of licensing and~~
18 ~~inspecting centers.~~

19 (a) ~~The annual licensure fee is due at the time of~~
20 ~~application and is payable to the agency to be deposited in~~
21 ~~the Health Care Trust Fund administered by the agency. The~~
22 ~~license fee must be not less than~~~~\$600~~~~\$300~~ or more than
23 \$2,000 per biennium~~\$1,000~~.

24 (b) ~~The fee for late filing of an application for~~
25 ~~license renewal is \$200 and is in addition to the licensure~~
26 ~~fee due for renewing the license.~~

27 (3) ~~ANNUAL LICENSING.~~ ~~The agency shall provide for~~
28 ~~annual licensing of centers. Any center that fails to pay the~~
29 ~~proper fee or otherwise fails to qualify by the date of~~
30 ~~expiration of its license is delinquent, and its license is~~
31 ~~automatically canceled without notice or further proceeding.~~

1 ~~Upon cancellation of its license under this subsection, a~~
2 ~~center may have its license reinstated only upon application~~
3 ~~and qualification as provided for initial applicants and upon~~
4 ~~payment of all delinquent fees.~~

5 (3)~~(4)~~ STANDARDS OF PERFORMANCE.--The agency shall
6 prescribe standards for the performance of health testing
7 procedures.

8 (4)~~(5)~~ CONSTRUCTION OF CENTERS.--The agency may adopt
9 rules to ensure that centers comply with all local, county,
10 state, and federal standards for the construction, renovation,
11 maintenance, or repair of centers, which standards must ensure
12 the conduct and operation of the centers in a manner that will
13 protect the public health.

14 (5)~~(6)~~ SAFETY AND SANITARY CONDITIONS WITHIN THE
15 CENTER AND ITS SURROUNDINGS.--The agency shall establish
16 standards relating to safety and sanitary conditions within
17 the center and its surroundings, including water supply;
18 sewage; the handling of specimens; identification,
19 segregation, and separation of biohazardous waste as required
20 by s. 381.0098; storage of chemicals; workspace; firesafety;
21 and general measures, which standards must ensure the
22 protection of the public health. The agency shall determine
23 compliance by a multiphasic health testing center with the
24 requirements of s. 381.0098 by verifying that the center has
25 obtained all required permits.

26 (6)~~(7)~~ EQUIPMENT.--The agency shall establish minimum
27 standards for center equipment essential to the proper conduct
28 and operation of the center.

29 (7)~~(8)~~ PERSONNEL.--The agency shall prescribe minimum
30 qualifications for center personnel. A center may employ as a
31

1 | medical assistant a person who has at least one of the
2 | following qualifications:

3 | (a) Prior experience of not less than 6 months as a
4 | medical assistant in the office of a licensed medical doctor
5 | or osteopathic physician or in a hospital, an ambulatory
6 | surgical center, a home health agency, or a health maintenance
7 | organization.

8 | (b) Certification and registration by the American
9 | Medical Technologists Association or other similar
10 | professional association approved by the agency.

11 | (c) Prior employment as a medical assistant in a
12 | licensed center for at least 6 consecutive months at some time
13 | during the preceding 2 years.

14 | Section 202. Section 483.294, Florida Statutes, is
15 | amended to read:

16 | 483.294 Inspection of centers.--The agency shall, at
17 | least once annually, inspect the premises and operations of
18 | all centers subject to licensure under this part, ~~without~~
19 | ~~prior notice to the centers, for the purpose of studying and~~
20 | ~~evaluating the operation, supervision, and procedures of such~~
21 | ~~facilities, to determine their compliance with agency~~
22 | ~~standards and to determine their effect upon the health and~~
23 | ~~safety of the people of this state.~~

24 | Section 203. Section 483.30, Florida Statutes, is
25 | amended to read:

26 | 483.30 Licensing of centers.--The requirements of part
27 | II of chapter 408 apply to the provision of services that
28 | necessitate licensure pursuant to this part and part II of
29 | chapter 408 and to entities licensed by or applying for such
30 | licensure from the Agency for Health Care Administration
31 |

1 pursuant to this part; however, an applicant for licensure is
2 exempt from s. 408.810(5)-(10).

3 ~~(1) A person may not conduct, maintain, or operate a~~
4 ~~multiphasic health testing center in this state without~~
5 ~~obtaining a multiphasic health testing center license from the~~
6 ~~agency. The license is valid only for the person or persons~~
7 ~~to whom it is issued and may not be sold, assigned, or~~
8 ~~transferred, voluntarily or involuntarily. A license is not~~
9 ~~valid for any premises other than the center for which it is~~
10 ~~issued. However, a new license may be secured for the new~~
11 ~~location for a fixed center before the actual change, if the~~
12 ~~contemplated change is in compliance with this part and the~~
13 ~~rules adopted under this part. A center must be relicensed if~~
14 ~~a change of ownership occurs. Application for relicensure~~
15 ~~must be made 60 days before the change of ownership.~~

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

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

29 ~~(b) The agency may require background screening of any~~
30 ~~other individual who is an applicant if the agency has~~
31 ~~probable cause to believe that he or she has been convicted of~~

1 ~~a crime or has committed any other offense prohibited under~~
2 ~~the level 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 the requirements of paragraph (a).~~

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

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

1 ~~permanent suspensions, or terminations of the applicant from~~
2 ~~the Medicare or Medicaid programs. Proof of compliance with~~
3 ~~the requirements for disclosure of ownership and control~~
4 ~~interests under the Medicaid or Medicare programs may be~~
5 ~~accepted in lieu of this submission.~~

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

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

31

1 ~~(h) The agency may deny or revoke licensure if the~~
2 ~~applicant:~~

3 ~~1. Has falsely represented a material fact in the~~
4 ~~application required by paragraph (c) or paragraph (f), or has~~
5 ~~omitted any material fact from the application required by~~
6 ~~paragraph (c) or paragraph (f); or~~

7 ~~2. Has had prior action taken against the applicant~~
8 ~~under the Medicaid or Medicare program as set forth in~~
9 ~~paragraph (c).~~

10 ~~(i) An application for license renewal must contain~~
11 ~~the information required under paragraphs (c) and (f).~~

12 Section 204. Section 483.302, Florida Statutes, is
13 amended to read:

14 483.302 Application for license.--

15 ~~(1) Application for a license as required by s. 483.30~~
16 ~~must be made to the agency on forms furnished by it and must~~
17 ~~be accompanied by the appropriate license fee.~~

18 ~~(2) The application for a license must shall contain:~~

19 ~~(1)(a) A determination as to whether the facility will~~
20 ~~be fixed or mobile and the location for a fixed facility.~~

21 ~~(b) The name and address of the owner if an~~
22 ~~individual; if the owner is a firm, partnership, or~~
23 ~~association, the name and address of every member thereof; if~~
24 ~~the owner is a corporation, its name and address and the name~~
25 ~~and address of its medical director and officers and of each~~
26 ~~person having at least a 10 percent interest in the~~
27 ~~corporation.~~

28 ~~(2)(c) The name of any person whose name is required~~
29 ~~on the application under the provisions of paragraph (b) and~~
30 ~~who owns at least a 10 percent interest in any professional~~
31 ~~service, firm, association, partnership, or corporation~~

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

5 ~~(d) The name by which the facility is to be known.~~

6 ~~(3)(e)~~ The name, address, and Florida physician's
7 license number of the medical director.

8 Section 205. Section 483.311 and subsection (1) of
9 section 483.317, Florida Statutes, are repealed.

10 Section 206. Section 483.32, Florida Statutes, is
11 amended to read:

12 483.32 Administrative fines ~~penalties~~.--

13 (1)~~(a)~~ The agency may ~~deny, suspend, revoke, annul,~~
14 ~~limit, or deny renewal of a license or~~ impose an
15 administrative fine, not to exceed \$500 per violation, for the
16 violation of any provision of this part, part II of chapter
17 408, or applicable rules adopted under this part. ~~Each day of~~
18 ~~violation constitutes a separate violation and is subject to a~~
19 ~~separate fine.~~

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

23 ~~(a)1-~~ The severity of the violation, including the
24 probability that death or serious harm to the health or safety
25 of any person will result or has resulted; the severity of the
26 actual or potential harm; and the extent to which the
27 provisions of this part were violated.

28 ~~(b)2-~~ Actions taken by the licensee to correct the
29 violation or to remedy complaints.

30 ~~(c)3-~~ Any previous violation by the licensee.

31

1 ~~(d)4.~~ The financial benefit to the licensee of
2 committing or continuing the violation.

3 ~~(c) All amounts collected under this section must be~~
4 ~~deposited into the Health Care Trust Fund administered by the~~
5 ~~agency.~~

6 ~~(2) The agency may issue an emergency order~~
7 ~~immediately suspending, revoking, annulling, or limiting a~~
8 ~~license when it determines that any condition in the licensed~~
9 ~~facility presents a clear and present danger to public health~~
10 ~~and safety.~~

11 Section 207. Subsection (1) of section 483.322 and
12 section 483.328, Florida Statutes, are repealed.

13 Section 208. In the case of a conflict between the
14 provisions of part II of chapter 408, Florida Statutes, and
15 the authorizing statutes governing the licensure of health
16 care providers by the Agency for Health Care Administration,
17 found in chapter 112, chapter 383, chapter 390, chapter 394,
18 chapter 395, chapter 400, chapter 440, or chapter 483, Florida
19 Statutes, the provisions of part II of chapter 408, Florida
20 Statutes, shall prevail.

21 Section 209. Between October 1, 2004, and September
22 30, 2005, the Agency for Health Care Administration may issue
23 any license for less than a 2-year period by charging a
24 prorated licensure fee and specifying a different renewal date
25 than the date that would otherwise be required for biennial
26 licensure.

27 Section 210. Subsection (7) of section 651.118,
28 Florida Statutes, is amended to read:

29 651.118 Agency for Health Care Administration;
30 certificates of need; sheltered beds; community beds.--
31

1 (7) Notwithstanding the provisions of subsection (2),
2 at the discretion of the continuing care provider, sheltered
3 nursing home beds may be used for persons who are not
4 residents of the continuing care facility and who are not
5 parties to a continuing care contract for a period of up to 5
6 years after the date of issuance of the initial nursing home
7 license. A provider whose 5-year period has expired or is
8 expiring may request the Agency for Health Care Administration
9 for an extension, not to exceed 30 percent of the total
10 sheltered nursing home beds, if the utilization by residents
11 of the nursing home facility in the sheltered beds will not
12 generate sufficient income to cover nursing home facility
13 expenses, as evidenced by one of the following:

14 (a) The nursing home facility has a net loss for the
15 most recent fiscal year as determined under generally accepted
16 accounting principles, excluding the effects of extraordinary
17 or unusual items, as demonstrated in the most recently audited
18 financial statement; or

19 (b) The nursing home facility would have had a pro
20 forma loss for the most recent fiscal year, excluding the
21 effects of extraordinary or unusual items, if revenues were
22 reduced by the amount of revenues from persons in sheltered
23 beds who were not residents, as reported on by a certified
24 public accountant.

25
26 The agency shall be authorized to grant an extension to the
27 provider based on the evidence required in this subsection.
28 The agency may request a continuing care facility to use up to
29 25 percent of the patient days generated by new admissions of
30 nonresidents during the extension period to serve Medicaid
31 recipients for those beds authorized for extended use if there

1 is a demonstrated need in the respective service area and if
2 funds are available. A provider who obtains an extension is
3 prohibited from applying for additional sheltered beds under
4 the provision of subsection (2), unless additional residential
5 units are built or the provider can demonstrate need by
6 continuing care facility residents to the Agency for Health
7 Care Administration. The 5-year limit does not apply to up to
8 five sheltered beds designated for inpatient hospice care as
9 part of a contractual arrangement with a hospice licensed
10 under part VI of chapter 400. A continuing care facility that
11 uses such beds after the 5-year period shall report such use
12 to the Agency for Health Care Administration. For purposes of
13 this subsection, "resident" means a person who, upon admission
14 to the continuing care facility, initially resides in a part
15 of the continuing care facility not licensed under part II of
16 chapter 400.

17 Section 211. This act shall take effect October 1,
18 2004.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for CS for SB 1680
4 Provides an alternative for reporting a change in the
5 administrator of a provider to the Department of Health (DOH)
6 or professional board, instead of the Agency for Health Care
7 Administration (AHCA).
8 Requires AHCA to update nursing home data promptly.
9 Requires Assisted Living Facilities (ALFs) to conduct
10 elopement prevention drills twice per year.
11 Provides for a certificate of need (CON) exemption for adding
12 beds or building a small facility in a county of 50,000 or
13 fewer residents.
14 Prevents a teacher from being an athletic trainer without
15 being licensed as an athletic trainer.
16 Requires health care providers to comply with a patient's
17 advance directive or order not to resuscitate, or to transfer
18 the patient to a facility that will comply with the advance
19 directive or order not to resuscitate. Provides for a delay
20 in carrying out an advance directive for organ donors.
21 Encourages physicians to discuss end-of-life care with their
22 patients on a nonemergency basis and requires a physician to
23 make a patient's advance directive part of the patient's
24 medical record.
25 Allows a nursing home to "bank" beds under an inactive license
26 for 12 months with a 12-month renewal.
27 Provides that certain nurses may sign a resident care plan.
28 Revises standards for use of sheltered nursing home beds by
29 certain persons.
30 Revises the provisions of the Health Care Clinic Act, part
31 XIII of chapter 400, F.S.