

1 A bill to be entitled
2 An act relating to the licensure of health care
3 providers; designating parts I, II, III, and IV
4 of ch. 408, F.S., relating to health care
5 administration; creating ss. 408.801-408.819,
6 F.S.; amending ss. 400.991, 400.9915, 400.992,
7 400.9925, 400.993, 400.9935, and 400.995, F.S.,
8 and repealing ss. 400.9905(2), 400.994, and
9 400.9945, F.S., relating to health care
10 clinics; defining terms; providing licensure
11 requirements for mobile clinics; prohibiting
12 the transfer of certain exemptions; providing
13 for the expiration of certain temporary
14 licenses; providing for the refund of certain
15 fees; exempting certain persons from license
16 application deadlines; requiring health care
17 clinics to be in compliance with part II of ch.
18 408, 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.; providing requirements for
23 license application; providing for late fees;
24 providing duties of the agency, including
25 requirements for inspections; authorizing the
26 electronic submission of information to the
27 agency; providing requirements for licensure
28 upon a change of ownership of a provider;
29 specifying license categories; requiring
30 background screening of a licensee,
31 administrator, financial officer, or

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; amending s. 400.9905,
15 F.S.; revising the definitions of "clinic" and
16 "medical director" and defining "mobile clinic"
17 and "portable equipment provider" for purposes
18 of the Health Care Clinic Act; providing that
19 certain entities providing oncology or
20 radiation therapy services are exempt from the
21 licensure requirements of part XIII of ch. 400,
22 F.S.; providing legislative intent with respect
23 to such exemption; providing for retroactive
24 application; amending s. 400.991, F.S.;
25 requiring each mobile clinic to obtain a health
26 care clinic license; requiring a portable
27 equipment provider to obtain a health care
28 clinic license for a single office and
29 exempting such a provider from submitting
30 certain information to the Agency for Health
31 Care Administration; revising the date by which

1 an initial application for a health care clinic
2 license must be filed with the agency; revising
3 the definition of "applicant"; amending s.
4 400.9935, F.S.; providing that an exemption
5 from licensure is not transferable; providing
6 that the agency may charge a fee of applicants
7 for certificates of exemption; providing that
8 the agency may deny an application or revoke a
9 license under certain circumstances; amending
10 s. 400.995, F.S.; providing that the agency may
11 deny, revoke, or suspend specified licenses and
12 impose fines for certain violations; providing
13 that a temporary license expires after a notice
14 of intent to deny an application is issued by
15 the agency; providing that persons or entities
16 made exempt under the act and which have paid
17 the clinic licensure fee to the agency are
18 entitled to a partial refund from the agency;
19 providing that certain persons or entities are
20 not in violation of part XIII of ch. 400, F.S.,
21 due to failure to apply for a clinic license by
22 a specified date; providing that certain
23 payments may not be denied to such persons or
24 entities for failure to apply for or obtain a
25 clinic license before a specified date;
26 requiring substance abuse or mental health
27 facilities, programs, and services to be in
28 compliance with part II of ch. 408, F.S.;
29 providing for licensure fees; authorizing the
30 agency to adopt rules; providing for
31 administrative penalties; conforming provisions

1 with the requirements of part II of ch. 408,
2 F.S.; amending ss. 395.003, 395.004, 395.0161,
3 395.0163, 395.0199, 395.1046, 395.1055, and
4 395.1065, F.S., and repealing ss. 395.002(4),
5 395.0055, and 395.0162, F.S., relating to
6 hospitals and other licensed facilities;
7 requiring hospitals and other licensed
8 facilities to be in compliance with part II of
9 ch. 408, F.S.; providing for licensure fees;
10 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 s. 395.1041, F.S.;
14 requiring a facility licensed under ch. 395,
15 F.S., to withhold or withdraw cardiopulmonary
16 resuscitation when presented with an order not
17 to resuscitate; creating s. 395.10411, F.S.;
18 providing requirements to be carried out by a
19 facility licensed under ch. 395, F.S., when a
20 patient has an advance directive, has an order
21 not to resuscitate, or is a designated organ
22 donor; amending s. 765.1105, F.S.; requiring a
23 health care provider that refuses to carry out
24 a patient's advance directive to transfer the
25 patient within a specified time to a health
26 care provider that will comply with the advance
27 directive; creating s. 765.1021, F.S., to
28 encourage physicians and patients to discuss
29 end-of-life care and to specify when an advance
30 directive be part of the patient's medical
31 record; amending s. 765.304, F.S.; requiring an

1 attending physician who refuses to comply with
2 a person's living will to transfer the person
3 to a physician who will comply; amending s.
4 395.0197, F.S.; providing that a health care
5 facility must use the services of, rather than
6 hire, a risk manager; restricting the number of
7 internal risk management programs in separate
8 hospitals which may be the responsibility of a
9 risk manager; providing exceptions; amending
10 ss. 395.10973, 395.10974, and 395.10975, F.S.,
11 relating to health care risk managers;
12 requiring health care risk managers to comply
13 with part II of ch. 408, F.S.; providing for
14 fees; authorizing the agency to adopt rules;
15 providing for administrative fines; conforming
16 provisions with the requirements of part II of
17 ch. 408, F.S.; amending s. 400.21, F.S.;
18 providing that certain registered nurses may
19 sign a resident care plan; amending ss.
20 400.022, 400.051, 400.062, 400.063, 400.071,
21 400.102, 400.111, 400.1183, 400.121, 400.141,
22 400.17, 400.179, 400.18, 400.19, 400.191,
23 400.20, 400.211, and 400.23, F.S., and
24 repealing ss. 400.021(5) and (20), 400.125, and
25 400.241(1) and (2), F.S., relating to nursing
26 homes; requiring nursing homes to be in
27 compliance with part II of ch. 408, F.S.;
28 providing for licensure fees; authorizing the
29 agency to adopt rules; providing for
30 administrative fines; revising reporting
31 requirements; conforming provisions with the

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

2 creating s. 400.0712, F.S.; authorizing the

3 Agency for Health Care Administration to issue

4 an inactive license to a nursing home facility

5 for all or a portion of its beds; providing

6 procedures when applying for an inactive

7 license; permitting the agency to issue an

8 inactive license to a nursing home that chooses

9 to use an unoccupied contiguous portion of the

10 facility for an alternative use to meet the

11 needs of elderly persons through the use of

12 less restrictive, less institutional services;

13 providing that an inactive license issued may

14 be granted for specified periods of time;

15 directing that a nursing home that receives an

16 inactive license to provide alternative

17 services may not receive preference for

18 participation in the Assisted Living for the

19 Elderly Medicaid waiver; providing that

20 reactivation of an inactive license requires

21 the applicant to meet certain specified

22 conditions; amending ss. 400.402, 400.407,

23 400.4075, 400.408, 400.411, 400.412, 400.414,

24 400.417, 400.4174, 400.4176, 400.418, 400.419,

25 400.42, 400.424, 400.4255, 400.4256, 400.427,

26 400.4275, 400.431, 400.434, 400.441, 400.442,

27 400.444, 400.452, and 400.454, F.S., and

28 repealing ss. 400.415, 400.4178(7), 400.435(1),

29 400.447(1), (2), and (3), and 400.451, F.S.,

30 relating to assisted living facilities;

31 requiring assisted living facilities to be in

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

2 providing for licensure fees; requiring

3 assisted living facilities to conduct resident

4 elopement prevention and response drills;

5 authorizing the agency to adopt rules;

6 providing for administrative fines; conforming

7 provisions with the requirements of part II of

8 ch. 408, F.S.; amending s. 400.487, F.S.;

9 revising home health agency service agreements

10 and treatment orders; amending ss. 400.464,

11 400.471, 400.474, 400.484, 400.494, 400.495,

12 400.497, 400.506, 400.509, and 400.512, F.S.,

13 and repealing s. 400.515, F.S., relating to

14 home health agencies and nurse registries;

15 requiring home health agencies and nurse

16 registries to be in compliance with part II of

17 ch. 408, F.S.; providing for licensure fees;

18 authorizing the agency to adopt rules;

19 providing for administrative fines; conforming

20 provisions with the requirements of part II of

21 ch. 408, F.S.; amending ss. 400.551, 400.554,

22 400.555, 400.556, 400.5565, 400.557, 400.5572,

23 400.559, 400.56, and 400.562, F.S., and

24 repealing ss. 400.5575, 400.558, and 400.564,

25 F.S., relating to adult day care centers;

26 requiring adult day care centers to be in

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

28 providing for licensure fees; authorizing the

29 agency to adopt rules; providing for

30 administrative fines; conforming provisions

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

1 F.S.; amending ss. 400.602, 400.605, 400.606,
2 400.6065, 400.607, and 400.6095, F.S., relating
3 to hospices; requiring hospices to be in
4 compliance with part II of ch. 408, F.S.;
5 providing for licensure fees; authorizing the
6 agency to adopt rules; providing for
7 administrative fines; conforming provisions
8 with the requirements of part II of ch. 408,
9 F.S.; amending ss. 400.617, 400.619, 400.6194,
10 400.6196, 400.621, 400.6211, and 400.625, F.S.,
11 and repealing s. 400.622, F.S., relating to
12 adult family-care homes; requiring adult
13 family-care homes to be in compliance with part
14 II of ch. 408, F.S.; providing for licensure
15 fees; authorizing the agency to adopt rules;
16 providing for administrative fines; conforming
17 provisions with the requirements of part II of
18 ch. 408, F.S.; amending ss. 400.801 and
19 400.805, F.S., relating to homes for special
20 services and transitional living facilities;
21 requiring such homes and facilities to be in
22 compliance with part II of ch. 408, F.S.;
23 providing for licensure fees; authorizing the
24 agency to adopt rules; providing for
25 administrative fines; conforming provisions
26 with the requirements of part II of ch. 408,
27 F.S.; amending ss. 400.902, 400.903, 400.905,
28 400.907, 400.908, 400.912, 400.914, and
29 400.915, F.S., and repealing ss. 400.906,
30 400.910, 400.911, 400.913, 400.916, and
31 400.917, F.S., relating to prescribed pediatric

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

1 administrative fines; conforming provisions
2 with the requirements of part II of ch. 408,
3 F.S.; amending ss. 400.991, 400.9915, 400.992,
4 400.9925, 400.993, 400.9935, and 400.995, F.S.,
5 and repealing ss. 400.9905(2), 400.994, and
6 400.9945, F.S., relating to health care
7 clinics; requiring health care clinics to be in
8 compliance with part II of ch. 408, F.S.;
9 providing for licensure fees; authorizing the
10 agency to adopt rules; providing for
11 administrative fines; conforming provisions
12 with the requirements of part II of ch. 408,
13 F.S.; amending s. 408.036, F.S.; revising the
14 prerequisites for allowing an exemption from
15 certificate-of-need review for adding skilled
16 nursing facility beds to a licensed skilled
17 nursing facility or for construction of a
18 skilled nursing facility; allowing such an
19 exemption only in counties having a specified
20 maximum population; amending s. 408.831, F.S.,
21 relating to the authority of the Agency for
22 Health Care Administration to impose certain
23 penalties against a regulated or licensed
24 entity; conforming provisions to changes made
25 by the act; amending s. 440.102, F.S., relating
26 to the drug-free workplace program; requiring
27 laboratories to be in compliance with the
28 requirements of part II of ch. 408, F.S.;
29 conforming provisions to changes made by the
30 act; amending s. 468.711, F.S.; deleting the
31 requirement that continuing education for

1 athletic trainers include first aid; amending
2 s. 468.723, F.S.; revising exemptions from
3 licensure requirements; amending s. 1012.46,
4 F.S.; providing that a first responder for a
5 school district may not represent himself or
6 herself as an athletic trainer; amending ss.
7 483.035, 483.051, 483.061, 483.091, 483.101,
8 483.111, 483.172, 483.201, 483.221, and 483.23,
9 F.S., and repealing ss. 483.131 and 483.25,
10 F.S., relating to clinical laboratories;
11 requiring clinical laboratories to be in
12 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. 483.291, 483.294, 483.30,
18 483.302, and 483.32, F.S., and repealing ss.
19 483.311, 483.317(1), 483.322(1), and 483.328,
20 F.S., relating to multiphasic health testing
21 centers; requiring such centers to be in
22 compliance with part II of ch. 408, F.S.;

23 providing for licensure fees; authorizing the
24 agency to adopt rules; providing for
25 administrative fines; conforming provisions
26 with the requirements of part II of ch. 408,
27 F.S.; providing for ss. 408.801-408.819, F.S.,
28 to prevail in the case of a conflict with other
29 laws governing the licensure of health care
30 providers by the agency; authorizing the agency
31 to issue a license for less than a specified

1 period and to charge a prorated fee; amending
2 s. 651.118, F.S.; revising standards for use of
3 sheltered nursing home beds by certain persons;
4 amending s. 456.025, F.S.; deleting
5 requirements for the Department of Health to
6 administer an electronic continuing education
7 tracking system for health care practitioners;
8 creating s. 456.0251, F.S.; providing for
9 enforcement of continuing education
10 requirements required for license renewal;
11 authorizing citations and fines to be imposed
12 for failure to comply with required continuing
13 education requirements; amending s. 456.072,
14 F.S.; providing for discipline of licensees who
15 fail to meet continuing education requirements
16 as a prerequisite for license renewal three or
17 more times; providing a short title; requiring
18 the Agency for Workforce Innovation to
19 establish a pilot program for delivery of
20 certified geriatric specialty nursing
21 education; specifying eligibility requirements
22 for certified nursing assistants to obtain
23 certified geriatric specialty nursing
24 education; specifying requirements for the
25 education of certified nursing assistants to
26 prepare for certification as a certified
27 geriatric specialist; creating a Certified
28 Geriatric Specialty Nursing Initiative Steering
29 Committee; providing for the composition of and
30 manner of appointment to the Certified
31 Geriatric Specialty Nursing Initiative Steering

1 Committee; providing responsibilities of the
2 steering committee; providing for reimbursement
3 for per diem and travel expenses; requiring the
4 Agency for Workforce Innovation to conduct or
5 contract for an evaluation of the pilot program
6 for delivery of certified geriatric specialty
7 nursing education; requiring the evaluation to
8 include recommendations regarding the expansion
9 of the delivery of certified geriatric
10 specialty nursing education in nursing homes;
11 requiring the Agency for Workforce Innovation
12 to report to the Governor and Legislature
13 regarding the status and evaluation of the
14 pilot program; creating s. 464.0125, F.S.;
15 providing definitions; providing requirements
16 for persons to become certified geriatric
17 specialists; specifying fees; providing for
18 articulation of geriatric specialty nursing
19 coursework and practical nursing coursework;
20 providing practice standards and grounds for
21 which certified geriatric specialists may be
22 subject to discipline by the Board of Nursing;
23 creating restrictions on the use of
24 professional nursing titles; prohibiting the
25 use of certain professional titles; providing
26 penalties; authorizing approved nursing
27 programs to provide education for the
28 preparation of certified geriatric specialists
29 without further board approval; authorizing
30 certified geriatric specialists to supervise
31 the activities of others in nursing home

1 facilities according to rules by the Board of
2 Nursing; revising terminology relating to
3 nursing to conform to the certification of
4 geriatric specialists; amending s. 381.00315,
5 F.S.; revising requirements for the
6 reactivation of the licenses of specified
7 health care practitioners in the event of a
8 public health emergency to include certified
9 geriatric specialists; amending s. 400.021,
10 F.S.; including services provided by a
11 certified geriatric specialist within the
12 definition of nursing service; amending s.
13 400.211, F.S.; revising requirements for
14 persons employed as nursing assistants to
15 conform to the certification of certified
16 geriatric specialists; amending s. 400.23,
17 F.S.; specifying that certified geriatric
18 specialists shall be considered licensed
19 nursing staff; authorizing licensed practical
20 nurses to supervise the activities of certified
21 geriatric specialists in nursing home
22 facilities according to rules adopted by the
23 Board of Nursing; amending s. 409.908, F.S.;
24 revising the methodology for reimbursement of
25 Medicaid program providers to include services
26 of certified geriatric specialists; amending s.
27 458.303, F.S.; revising exceptions to the
28 practice of medicine to include services
29 delegated to a certified geriatric specialist
30 under specified circumstances; amending s.
31 1009.65, F.S.; revising eligibility for the

1 Medical Education Reimbursement and Loan
2 Repayment Program to include certified
3 geriatric specialists; amending s. 1009.66,
4 F.S.; revising eligibility requirements for the
5 Nursing Student Loan Forgiveness Program to
6 include certified geriatric specialists;
7 providing an appropriation; amending s.
8 464.201, F.S.; defining terms; amending s.
9 464.202, F.S.; authorizing the Board of Nursing
10 to adopt rules regarding the practice and
11 supervision of certified nursing assistants;
12 providing inapplicability to ss. 456.052 and
13 456.053, F.S.; providing effective dates.
14

15 Be It Enacted by the Legislature of the State of Florida:
16

17 Section 1. Part I of chapter 408, Florida Statutes,
18 consisting of sections 408.02, 408.031, 408.032, 408.033,
19 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038,
20 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045,
21 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08,
22 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20,
23 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057,
24 and 408.7071, is created and entitled "Health Facility and
25 Services Planning."

26 Section 2. Part II of chapter 408, Florida Statutes,
27 consisting of sections 408.801, 408.802, 408.803, 408.804,
28 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
29 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
30 408.819, and 408.831, is created and entitled "Health Care
31 Licensing: General Provisions."

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

5 Section 4. Part IV of chapter 408, Florida Statutes,
6 consisting of sections 408.911, 408.913, 408.914, 408.915,
7 408.916, 408.917, and 408.918, is created and entitled "Health
8 and Human Services Eligibility Access System."

9 Section 5. Sections 408.801 through 408.819, Florida
10 Statutes, are created to read:

11 408.801 Short title; purpose.--

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

14 (2) The Legislature finds that there is unnecessary
15 duplication and variation in the requirements for licensure by
16 the Agency for Health Care Administration, brought about by
17 the historical pattern of legislative action focused
18 exclusively on a single type of regulated provider. It is the
19 intent of the Legislature to provide a streamlined and
20 consistent set of basic licensing requirements for all such
21 providers in order to minimize confusion, standardize
22 terminology, and include issues that are otherwise not
23 adequately addressed in the statutes pertaining to specific
24 providers.

25 408.802 Applicability.--The provisions of this part
26 apply to the provision of services that necessitate licensure
27 as defined in this part and to the following entities licensed
28 or registered by the Agency for Health Care Administration, as
29 further described in chapters 112, 383, 390, 394, 395, 400,
30 440, and 483:

31

- 1 (1) Laboratories authorized to perform testing under
2 the Drug-Free Workplace Act, as provided under ss. 112.0455
3 and 440.102.
- 4 (2) Birth centers, as provided under chapter 383.
- 5 (3) Abortion clinics, as provided under chapter 390.
- 6 (4) Crisis stabilization units, as provided under
7 parts I and IV of chapter 394.
- 8 (5) Short-term residential treatment units, as
9 provided under parts I and IV of chapter 394.
- 10 (6) Residential treatment facilities, as provided
11 under part IV of chapter 394.
- 12 (7) Residential treatment centers for children and
13 adolescents, as provided under part IV of chapter 394.
- 14 (8) Hospitals, as provided under part I of chapter
15 395.
- 16 (9) Ambulatory surgical centers, as provided under
17 part I of chapter 395.
- 18 (10) Mobile surgical facilities, as provided under
19 part I of chapter 395.
- 20 (11) Private review agents, as provided under part I
21 of chapter 395.
- 22 (12) Health care risk managers, as provided under part
23 I of chapter 395.
- 24 (13) Nursing homes, as provided under part II of
25 chapter 400.
- 26 (14) Assisted living facilities, as provided under
27 part III of chapter 400.
- 28 (15) Home health agencies, as provided under part IV
29 of chapter 400.
- 30 (16) Nurse registries, as provided under part IV of
31 chapter 400.

- 1 (17) Companion services or homemaker services
- 2 providers, as provided under part IV of chapter 400.
- 3 (18) Adult day care centers, as provided under part V
- 4 of chapter 400.
- 5 (19) Hospices, as provided under part VI of chapter
- 6 400.
- 7 (20) Adult family-care homes, as provided under part
- 8 VII of chapter 400.
- 9 (21) Homes for special services, as provided under
- 10 part VIII of chapter 400.
- 11 (22) Transitional living facilities, as provided under
- 12 part VIII of chapter 400.
- 13 (23) Prescribed pediatric extended care centers, as
- 14 provided under part IX of chapter 400.
- 15 (24) Home medical equipment providers, as provided
- 16 under part X of chapter 400.
- 17 (25) Intermediate care facilities for the
- 18 developmentally disabled, as provided under part XI of chapter
- 19 400.
- 20 (26) Health care services pools, as provided under
- 21 part XII of chapter 400.
- 22 (27) Health care clinics, as provided under part XIII
- 23 of chapter 400.
- 24 (28) Clinical laboratories, as provided under part I
- 25 of chapter 483.
- 26 (29) Multiphasic health testing centers, as provided
- 27 under part II of chapter 483.
- 28 408.803 Definitions.--As used in this part, the term:
- 29 (1) "Agency" means the Agency for Health Care
- 30 Administration, which is the licensing agency under this part.
- 31

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

4 (3) "Authorizing statute" means the statute
5 authorizing the licensed operation of a provider listed in s.
6 408.802.

7 (4) "Certification" means certification as a Medicare
8 or Medicaid provider of the services that necessitate
9 licensure or certification pursuant to the federal Clinical
10 Laboratory Improvement Amendments (CLIA).

11 (5) "Change in ownership" means an event in which the
12 licensee changes to a different legal entity or in which 45
13 percent or more of the ownership, voting shares, or
14 controlling interest in a corporation whose shares are not
15 publicly traded on a recognized stock exchange is transferred
16 or assigned, including the final transfer or assignment of
17 multiple transfers or assignments over a 2-year period which
18 cumulatively total 45 percent or greater. However, a change
19 solely in the management company is not a change of ownership.

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

22 (7) "Controlling interest" means:

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

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

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

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The term does not include a voluntary board member.

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

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

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

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

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

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

408.804 License required; display.--

1 (1) It is unlawful to provide services that
2 necessitate licensure, or operate or maintain a provider
3 offering or providing services that necessitate licensure,
4 without first obtaining from the agency a license authorizing
5 such operation.

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

14 408.805 Fees required; adjustments.--Unless otherwise
15 limited by authorizing statutes, license fees must be
16 reasonably calculated by the agency to cover its costs in
17 carrying out its responsibilities under this part, authorizing
18 statutes, and applicable rules, including the cost of
19 licensure, inspection, and regulation of providers, and must
20 be of such amount that the total fees collected do not exceed
21 the cost of administering and enforcing compliance with this
22 part, authorizing statutes, and applicable rules.

23 (1) Licensure fees shall be adjusted for biennial
24 licensure in agency rules.

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

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

1 (4) An inspection fee must be paid as required in
2 authorizing statutes.

3 (5) Licensure and inspection fees are nonrefundable.

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

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

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

13 408.806 License application process.--

14 (1) An application for licensure must be made to the
15 agency on forms furnished by the agency, submitted under oath,
16 and accompanied by the appropriate license fee in order to be
17 accepted and considered timely. The application must contain
18 information required by authorizing statutes and applicable
19 rules and must include:

20 (a) The name, address, and social security number of
21 the applicant and each controlling interest if the applicant
22 or controlling interest is an individual.

23 (b) The name, address, and federal employer
24 identification number or taxpayer identification number of the
25 applicant and each controlling interest if the applicant or
26 controlling interest is not an individual.

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

28 (d) The total number of beds or capacity requested, as
29 applicable.

30 (e) The location of the provider for which application
31 is made, a report or letter from the zoning authority

1 indicating the location is zoned appropriately for its use,
2 and a satisfactory fire safety report from the local authority
3 having jurisdiction or the state fire marshal. If the provider
4 is a community residential home under chapter 419, the zoning
5 requirement must be satisfied by proof of compliance with
6 chapter 419.

7 (f) The name of the person or persons under whose
8 management or supervision the provider will be operated and
9 the name of the administrator if required.

10 (g) Any information that the agency finds is necessary
11 to determine the ability of the applicant to carry out its
12 responsibilities, including satisfactory inspection results,
13 under this part and authorizing statutes, as specified in
14 rule.

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

18 (b) The applicant for initial licensure due to a
19 change of ownership must submit an application that must be
20 received by the agency at least 60 days prior to the date of
21 change of ownership.

22 (c) For any other application or request, the
23 applicant must submit an application or request that must be
24 received by the agency at least 60 days prior to the requested
25 effective date, unless otherwise specified in authorizing
26 statutes or rules.

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

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

7 (5) Licensees subject to the provisions of this part
8 shall be issued biennial licenses unless conditions of the
9 license category specify a shorter license period. The agency
10 may not issue an initial license to a health care provider
11 subject to the certificate-of-need provisions in ss.
12 408.031-408.045 if the licensee has not been issued a
13 certificate of need or exemption, when applicable. Failure to
14 apply for the renewal of a license prior to the expiration
15 date renders the license null and void and the former licensee
16 may not be issued a new license unless the licensee reapplies
17 for an initial license and meets all current qualifications
18 for licensure, including construction standards for facilities
19 where applicable and complies with certificate-of-need
20 requirements if the applicant is subject to the provisions of
21 ss. 408.031-408.045.

22 (6) The failure to file a timely application and
23 license fee shall result in a late fee charged to the licensee
24 in an amount equal to 50 percent of the licensure fee. If a
25 renewal application is not received by the agency 60 days in
26 advance of the license expiration date, the agency shall
27 notify the licensee of this late fee within 10 days after the
28 date the renewal application was due.

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

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1 (8) Each license issued shall indicate the name of the
2 licensee, the provider or service that the licensee is
3 required or authorized to operate or offer, the date the
4 license is issued, the expiration date of the license, the
5 maximum capacity of the licensed premises if applicable, and
6 any other information required by authorizing statutes or
7 deemed necessary by the agency.

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

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

17 (c) If a provider is not available when an inspection
18 is attempted, the application shall be withdrawn from further
19 consideration.

20 (10) The agency may establish procedures for the
21 electronic submission of required information, including, but
22 not limited to:

23 (a) Licensure applications and required signatures.

24 (b) Payment of fees.

25 (c) Notarization of applications.

26
27 Requirements for electronic submission of any documents
28 required by this part or authorizing statutes may be
29 established by rule.

30 408.807 Change of ownership.--Whenever a change of
31 ownership occurs:

- 1 (1) The transferor shall notify the agency in writing
2 at least 60 days before the anticipated date of transfer of
3 ownership.
- 4 (2) The transferee shall make application to the
5 agency for a license within the timeframes required in s.
6 408.806.
- 7 (3) The transferor shall be responsible and liable
8 for:
- 9 (a) The lawful operation of the provider and the
10 welfare of the clients served until the date the transferee is
11 licensed by the agency.
- 12 (b) Any and all penalties imposed against the
13 transferor for violations occurring before the date of change
14 of ownership.
- 15 (4) Any restriction on licensure, including a
16 conditional license existing at the time of a change of
17 ownership, shall remain in effect until removed by the agency.
- 18 (5) The transferee shall maintain records of the
19 transferor as required in this part, authorizing statutes, and
20 applicable rules including:
- 21 (a) All client records.
- 22 (b) Inspection reports.
- 23 (c) All records required to be maintained pursuant to
24 409.913, if applicable.
- 25 408.808 License categories.--
- 26 (1) STANDARD LICENSE.--A standard license may be
27 issued at the time of initial licensure, license renewal, or
28 change of ownership. A standard license shall be issued when
29 the applicant is in compliance with all statutory requirements
30 and agency rules. Unless sooner revoked, a standard license
31 expires 2 years following the date of issue.

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

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

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

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

1 inactive license requires the approval of a renewal
2 application, including payment of licensure fees and agency
3 inspections indicating compliance with all requirements of
4 this part, authorizing statutes, and applicable rules.

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

7 408.809 Background screening; prohibited offenses.--

8 (1) Level 2 background screening pursuant to chapter
9 435 must be conducted through the agency on each of the
10 following persons, who shall be considered an employee for the
11 purposes of conducting screening under chapter 435:

12 (a) The licensee if an individual;

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

15 (c) The financial officer or similarly titled
16 individual who is responsible for the financial operation of
17 the licensee or provider; and

18 (d) Any person who is a controlling interest if the
19 agency has reason to believe that such person has been
20 convicted of any offense prohibited by s. 435.04. For each
21 controlling interest who has been convicted of any such
22 offense, the licensee shall submit to the agency a description
23 and explanation of the conviction at the time of license
24 application.

25 (2) Proof of compliance with level 2 screening
26 standards submitted within the previous 5 years to meet any
27 provider or professional licensure requirements of the agency,
28 the Department of Health, or the Department of Children and
29 Family Services satisfies the requirements of this section,
30 provided that such proof is accompanied, under penalty of
31 perjury, by an affidavit of compliance with the provisions of

1 chapter 435. Proof of compliance with the background screening
2 requirements of the Office of Insurance Regulation for an
3 applicant for a certificate of authority to operate a
4 continuing care retirement community under chapter 651,
5 submitted within the previous 5 years, satisfies the
6 Department of Law Enforcement and Federal Bureau of
7 Investigation portions of a level 2 background check.

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

28 (4) When a change in the administrator of a provider
29 occurs, the licensee must notify the agency of the change
30 within the time period specified in the authorizing statute or
31 rules unless otherwise reported to the administrator's

1 professional licensing board, or Department of Health if there
2 is no board, and must provide evidence of compliance with
3 background screening requirements of this section; except that
4 an administrator who has met the standards for the Department
5 of Law Enforcement background check, but for whom background
6 screening results from the Federal Bureau of Investigation
7 have not yet been received, may be employed pending a receipt
8 of the Federal Bureau of Investigation background screening
9 report. An individual may not continue to serve as
10 administrator if the Federal Bureau of Investigation
11 background screening report indicates any violation of
12 background screening standards.

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

15 408.810 Minimum licensure requirements.--In addition
16 to the licensure requirements specified in this part, chapter
17 112, chapter 383, chapter 390, chapter 394, chapter 395,
18 chapter 400, chapter 440, or chapter 483, each applicant for
19 licensure by the Agency for Health Care Administration must
20 comply with the requirements of this section in order to
21 obtain and maintain a license.

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

24 (2) An applicant for licensure must provide a
25 description and explanation of any exclusions, suspensions, or
26 terminations of the applicant from the Medicare, Medicaid, or
27 federal Clinical Laboratory Improvement Amendments (CLIA)
28 programs.

29 (3) Unless otherwise specified in this part,
30 authorizing statutes, or applicable rules, any information
31 required to be reported to the agency must be submitted within

1 10 calendar days after the report period or effective date of
2 the information.

3 (4) Whenever a licensee discontinues operation of a
4 provider:

5 (a) The licensee must inform the agency not less than
6 30 days prior to the discontinuance of operation and inform
7 clients of discharge as required by authorizing statutes.
8 Immediately upon discontinuance of operation of a provider,
9 the licensee shall surrender the license to the agency and the
10 license shall be canceled.

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

17 1. Make arrangements to forward records for each
18 client to one of the following, based upon the client's
19 choice: the client or the client's legal representative, the
20 client's attending physician, or the health care provider
21 where the client currently receives services; or

22 2. Cause a notice to be published in the newspaper of
23 greatest general circulation in the county where the provider
24 was located which advises clients of the discontinuance of the
25 provider operation. The notice must inform clients that they
26 may obtain copies of their records and specify the name,
27 address, and telephone number of the person from whom the
28 copies of records may be obtained. The notice must appear at
29 least once a week for 4 consecutive weeks.

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

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

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

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

18
19 The agency shall publish a minimum of a 90-day advance notice
20 of a change in the toll-free telephone numbers.

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

23 (6) An applicant must provide the agency with proof of
24 the applicant's legal right to occupy the property before a
25 license may be issued. Proof may include, but need not be
26 limited to, copies of warranty deeds, lease or rental
27 agreements, contracts for deeds, quitclaim deeds, or other
28 such documentation.

29 (7) If proof of insurance is required by the
30 authorizing statute, that insurance must be in compliance with
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1 chapter 624, chapter 626, chapter 627, or chapter 628 and with
2 agency rules.

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

21 (9) A licensee or controlling interest may not
22 withhold from the agency any evidence of financial
23 instability, including, but not limited to, checks returned
24 due to insufficient funds, delinquent accounts, nonpayment of
25 withholding taxes, unpaid utility expenses, nonpayment for
26 essential services, or adverse court action concerning the
27 financial viability of the provider or any other provider
28 licensed under this part which is under the control of the
29 licensee. Any person found guilty of violating this subsection
30 commits a misdemeanor of the second degree, punishable as
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1 provided in s. 775.083. Each day of continuing violation is a
2 separate offense.

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

11 408.811 Right of inspection; copies; inspection
12 reports.--

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

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

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

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

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

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

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

30 408.812 Unlicensed activity.--
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1 (1) A person may not offer or advertise to the public
2 services as defined by this part, authorizing statutes, or
3 application rules without obtaining a valid license from the
4 Agency for Health Care Administration. The holder of a license
5 may not advertise or hold out to the public that he or she
6 holds a license for other than that for which he or she
7 actually holds a license.

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

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

28 (4) Any person found guilty of violating subsection
29 (3) a second or subsequent time commits a felony of the second
30 degree, punishable as provided under s. 775.082, s. 775.083,
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1 or s. 775.084. Each day of continued operation is a separate
2 offense.

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

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

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

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

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

1 separate fine. For fines imposed by final agency action, the
2 violator shall pay the fine, plus interest at the rate as
3 specified in s. 55.03 for each day beyond the date set by the
4 agency for payment of the fine.

5 408.814 Moratoriums; emergency suspensions.--

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

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

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

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

24 408.815 License denial; revocation.--

25 (1) In addition to grounds in authorizing statutes,
26 grounds that may be used by the agency for denying or revoking
27 a license or application include any of the following actions
28 by a controlling interest:

29 (a) False representation of a material fact in the
30 license application or omission of any material fact from the
31 application.

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

3 (c) A violation of this part, authorizing statutes, or
4 applicable rules.

5 (d) A demonstrated pattern of deficient performance.

6 (e) The applicant, licensee, or controlling interest
7 has been or is currently excluded, suspended, terminated from,
8 or has involuntarily withdrawn from participation in the state
9 Medicaid program, the Medicaid program of any other state, or
10 the Medicare program.

11 (2) If a licensee lawfully continues to operate while
12 a denial or revocation is pending in litigation, the licensee
13 must continue to meet all other requirements of this part,
14 authorizing statutes, and applicable rules, and must file
15 subsequent renewal applications for licensure, including
16 licensure fees. The provisions of s. 120.60(1) shall not apply
17 to renewal applications filed during the time period the
18 litigation of the denial or revocation is pending until that
19 litigation is final.

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

23 408.816 Injunctions.--

24 (1) In addition to the other powers provided by this
25 part and authorizing statutes, the agency may institute
26 injunction proceedings in a court of competent jurisdiction
27 to:

28 (a) Restrain or prevent the establishment or operation
29 of a provider that does not have a license or is in violation
30 of any provision of this part, authorizing statutes, or
31 applicable rules. The agency may also institute injunction

1 proceedings in a court of competent jurisdiction when a
2 violation of this part, authorizing statutes, or applicable
3 rules constitutes an emergency affecting the immediate health
4 and safety of a client.

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

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

16 (2) Such injunctive relief may be temporary or
17 permanent.

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

26 408.817 Administrative proceedings.--Administrative
27 proceedings challenging agency licensure enforcement action
28 shall be reviewed on the basis of the facts and conditions
29 that resulted in the agency action.

30 408.818 Health Care Trust Fund.--Unless otherwise
31 prescribed by authorizing statutes, all fees and fines

1 collected pursuant to this part, authorizing statutes, and
2 applicable rules shall be deposited into the Health Care Trust
3 Fund, created in s. 408.16, and used to pay the costs of the
4 agency in administering the provider program paying the fees
5 or fines.

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

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

17 112.0455 Drug-Free Workplace Act.--

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

19 (a) The requirements of ss. 408.801-408.819 apply to
20 the provision of services that necessitate licensure pursuant
21 to this section and part II of chapter 408 and to entities
22 licensed by or applying for such licensure from the Agency for
23 Health Care Administration pursuant to this section.

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

26 1. The laboratory is licensed and approved by the
27 Agency for Health Care Administration using criteria
28 established by the United States Department of Health and
29 Human Services as general guidelines for modeling the state
30 drug testing program and in accordance with part II of chapter
31 408. Each applicant for licensure must comply with all

1 requirements of part II of chapter 408, with the exception of
2 s. 408.810(5)-(10). ~~the following requirements:~~

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

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

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

24 ~~d. A provisional license may be granted to an~~
25 ~~applicant when each individual required by this section to~~
26 ~~undergo background screening has met the standards for the~~
27 ~~Department of Law Enforcement background check, but the agency~~
28 ~~has not yet received background screening results from the~~
29 ~~Federal Bureau of Investigation, or a request for a~~
30 ~~disqualification exemption has been submitted to the agency as~~
31 ~~set forth in chapter 435, but a response has not yet been~~

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

15 ~~e. Each applicant must submit to the agency, with its~~
16 ~~application, a description and explanation of any exclusions,~~
17 ~~permanent suspensions, or terminations of the applicant from~~
18 ~~the Medicare or Medicaid programs. Proof of compliance with~~
19 ~~the requirements for disclosure of ownership and control~~
20 ~~interests under the Medicaid or Medicare programs shall 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 sub-subparagraph.~~

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

16 ~~h. The agency may deny or revoke licensure if the~~
17 ~~applicant:~~

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

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

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

28 2. The laboratory has written procedures to ensure
29 chain of custody.

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

1 a. The use of internal quality controls including the
2 use of samples of known concentrations which are used to check
3 the performance and calibration of testing equipment, and
4 periodic use of blind samples for overall accuracy.

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

8 c. Security measures implemented by the testing
9 laboratory to preclude adulteration of specimens and drug test
10 results.

11 d. Other necessary and proper actions taken to ensure
12 reliable and accurate drug test results.

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

17 1. The name and address of the laboratory which
18 performed the test and the positive identification of the
19 person tested.

20 2. Positive results on confirmation tests only, or
21 negative results, as applicable.

22 3. A list of the drugs for which the drug analyses
23 were conducted.

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

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

29
30
31

1 No report shall disclose the presence or absence of any drug
2 other than a specific drug and its metabolites listed pursuant
3 to this section.

4 ~~(d)~~(e) The laboratory shall submit to the Agency for
5 Health Care Administration a monthly report with statistical
6 information regarding the testing of employees and job
7 applicants. The reports shall include information on the
8 methods of analyses conducted, the drugs tested for, the
9 number of positive and negative results for both initial and
10 confirmation tests, and any other information deemed
11 appropriate by the Agency for Health Care Administration. No
12 monthly report shall identify specific employees or job
13 applicants.

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

19 (13) RULES.--

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

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

28 2. Urine, hair, blood, and other body specimens and
29 minimum specimen amounts which are appropriate for drug
30 testing, not inconsistent with other provisions established by
31 law.

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

5 4. Minimum cutoff detection levels for drugs or their
6 metabolites for the purposes of determining a positive test
7 result, not inconsistent with other provisions established by
8 law.

9 5. Chain-of-custody procedures to ensure proper
10 identification, labeling, and handling of specimens being
11 tested, not inconsistent with other provisions established by
12 law.

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

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

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

1 ~~this section. The fee schedule is as follows: For licensure~~
2 ~~as a drug testing laboratory, an annual fee of not less than~~
3 ~~\$8,000 or more than \$10,000 per fiscal year; for late filing~~
4 ~~of an application for renewal, an additional fee of \$500 per~~
5 ~~day shall be charged.~~

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

8 383.301 Licensure and regulation of birth centers;
9 legislative intent.--It is the intent of the Legislature to
10 provide for the protection of public health and safety in the
11 establishment, maintenance, and operation of birth centers by
12 providing for licensure of birth centers and for the
13 development, establishment, and enforcement of minimum
14 standards with respect to birth centers. The requirements of
15 part II of chapter 408 apply to the provision of services that
16 necessitate licensure pursuant to ss. 383.30-383.335 and part
17 II of chapter 408 and to entities licensed by or applying for
18 such licensure from the Agency for Health Care Administration
19 pursuant to ss. 383.30-383.335.

20 Section 8. Section 383.304, Florida Statutes, is
21 repealed.

22 Section 9. Section 383.305, Florida Statutes, is
23 amended to read:

24 383.305 Licensure; ~~issuance, renewal, denial,~~
25 ~~suspension, revocation; fees; background screening.--~~

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

30 ~~(1)(a) Upon receipt of an application for a license~~
31 ~~and the license fee, the agency shall issue a license if the~~

1 ~~applicant and facility have received all approvals required by~~
2 ~~law and meet the requirements established under ss.~~
3 ~~383.30 383.335 and by rules promulgated hereunder.~~

4 ~~(b) A provisional license may be issued to any birth~~
5 ~~center that is in substantial compliance with ss.~~
6 ~~383.30 383.335 and with the rules of the agency. A~~
7 ~~provisional license may be granted for a period of no more~~
8 ~~than 1 year from the effective date of rules adopted by the~~
9 ~~agency, shall expire automatically at the end of its term, and~~
10 ~~may not be renewed.~~

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

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

24 ~~(3)(a) Each application for a birth center license, or~~
25 ~~renewal thereof, shall be accompanied by a license fee. Fees~~
26 ~~shall be established by rule of the agency. Such fees are~~
27 ~~payable to the agency and shall be deposited in a trust fund~~
28 ~~administered by the agency, to be used for the sole purpose of~~
29 ~~carrying out the provisions of ss. 383.30 383.335.~~

30 ~~(b) The fees established pursuant to ss.~~
31 ~~383.30 383.335 shall be based on actual costs incurred by the~~

1 ~~agency in the administration of its duties under such~~
2 ~~sections.~~

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

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

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

15 ~~(2)(7)~~ Each applicant for licensure must comply with
16 the following requirements of part II of chapter 408, with the
17 exception of s. 408.810(7)-(10).+

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 care and 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 standard license may be granted to the applicant~~
17 ~~upon the agency's receipt of a report of the results of the~~
18 ~~Federal 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 shall 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 (e) or paragraph (f), or has~~
5 ~~omitted any material fact from the application required by~~
6 ~~paragraph (e) 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 (e).~~

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

12 Section 10. Section 383.309, Florida Statutes, is
13 amended to read:

14 383.309 Minimum standards for birth centers; rules and
15 enforcement.--

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

20 (a) Sufficient numbers and qualified types of
21 personnel and occupational disciplines are available at all
22 times to provide necessary and adequate patient care and
23 safety.

24 (b) Infection control, housekeeping, sanitary
25 conditions, disaster plan, and medical record procedures that
26 will adequately protect patient care and provide safety are
27 established and implemented.

28 (c) Licensed facilities are established, organized,
29 and operated consistent with established programmatic
30 standards.

31

1 ~~(2) Any licensed facility that is in operation at the~~
2 ~~time of adoption of any applicable rule under ss.~~
3 ~~383.30 383.335 shall be given a reasonable time under the~~
4 ~~particular circumstances, not to exceed 1 year after the date~~
5 ~~of such adoption, within which to comply with such rule.~~

6 ~~(2)(3)~~ The agency may not establish any rule governing
7 the design, construction, erection, alteration, modification,
8 repair, or demolition of birth centers. It is the intent of
9 the Legislature to preempt that function to the Florida
10 Building Commission and the State Fire Marshal through
11 adoption and maintenance of the Florida Building Code and the
12 Florida Fire Prevention Code. However, the agency shall
13 provide technical assistance to the commission and the State
14 Fire Marshal in updating the construction standards of the
15 Florida Building Code and the Florida Fire Prevention Code
16 which govern birth centers. In addition, the agency may
17 enforce the special-occupancy provisions of the Florida
18 Building Code and the Florida Fire Prevention Code which apply
19 to birth centers in conducting any inspection authorized under
20 this chapter.

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

23 383.315 Agreements with consultants for advice or
24 services; maintenance.--

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

29 Section 12. Section 383.324, Florida Statutes, is
30 amended to read:

31

1 383.324 ~~Inspections and investigations;~~ Inspection
2 fees.--

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

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

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

12 Section 13. Section 383.325, Florida Statutes, is
13 repealed.

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

16 383.33 Administrative fines ~~penalties; emergency~~
17 ~~orders; moratorium on admissions.--~~

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

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

29 ~~(a)1-~~ The severity of the violation, including the
30 probability that death or serious harm to the health or safety
31 of any person will result or has resulted; the severity of the

1 actual or potential harm; and the extent to which the
2 provisions of ss. 383.30-383.335, part II of chapter 408, or
3 applicable rules were violated.

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

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

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

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

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

21 Section 15. Sections 383.331 and 383.332, Florida
22 Statutes, are repealed.

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

25 383.335 Partial exemptions.--

26 (1) Any facility that ~~which~~ was providing obstetrical
27 and gynecological surgical services and was owned and operated
28 by a board-certified obstetrician on June 15, 1984, and that
29 ~~which~~ is otherwise subject to licensure under ss.
30 383.30-383.335 as a birth center, is exempt from the
31 provisions of ss. 383.30-383.335 and part II of chapter 408

1 | which restrict the provision of surgical services and outlet
2 | forceps delivery and the administration of anesthesia at birth
3 | centers. The agency shall adopt rules specifically related to
4 | the performance of such services and the administration of
5 | anesthesia at such facilities.

6 | Section 17. Subsection (5) of section 390.011, Florida
7 | Statutes, is amended to read:

8 | 390.011 Definitions.--As used in this chapter, the
9 | term:

10 | (5) "Hospital" means a facility defined in s. 395.002
11 | and licensed under chapter 395.

12 | Section 18. Subsection (1) of section 390.012, Florida
13 | Statutes, is amended to read:

14 | 390.012 Powers of agency; rules; disposal of fetal
15 | remains.--

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

28 | (a) The performance of pregnancy termination
29 | procedures only by a licensed physician.

30 |
31 |

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

4 Section 19. Section 390.013, Florida Statutes, is
5 repealed.

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

8 390.014 Licenses; fees, ~~display, etc.--~~

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

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

23 (3) In accordance with s. 408.805, an applicant or
24 licensee shall pay a fee for each license application
25 submitted under this part and part II of chapter 408. The fee
26 shall be established by rule and ~~The annual license fee~~
27 ~~required for a clinic shall be nonrefundable and shall be~~
28 ~~reasonably calculated to cover the cost of regulation under~~
29 ~~this chapter, but may not be less than \$70 or \$35 nor more~~
30 ~~than \$500 per biennium \$250.~~

31

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

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

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

11 Section 21. Sections 390.015, 390.016, and 390.017,
12 Florida Statutes, are repealed.

13 Section 22. Section 390.018, Florida Statutes, is
14 amended to read:

15 390.018 Administrative fine ~~penalty in lieu of~~
16 ~~revocation or suspension.--In addition to the requirements of~~
17 part II of chapter 408 ~~If the agency finds that one or more~~
18 ~~grounds exist for the revocation or suspension of a license~~
19 ~~issued to an abortion clinic, the agency may, in lieu of such~~
20 ~~suspension or revocation,~~ impose a fine upon the clinic in an
21 amount not to exceed \$1,000 for each violation of any
22 provision of this part, part II of chapter 408, or applicable
23 rules. ~~The fine shall be paid to the agency within 60 days~~
24 ~~from the date of entry of the administrative order. If the~~
25 ~~licensee fails to pay the fine in its entirety to the agency~~
26 ~~within the period allowed, the license of the licensee shall~~
27 ~~stand suspended, revoked, or renewal or continuation may be~~
28 ~~refused, as the case may be, upon expiration of such period~~
29 ~~and without any further administrative or judicial~~
30 ~~proceedings.~~

31

1 Section 23. Sections 390.019 and 390.021, Florida
2 Statutes, are repealed.

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

5 394.455 Definitions.--As used in this part, unless the
6 context clearly requires otherwise, the term:

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

9 Section 25. Section 394.67, Florida Statutes, is
10 amended to read:

11 394.67 Definitions.--As used in this part, the term:

12 (1) "Agency" means the Agency for Health Care
13 Administration.

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

19 ~~(2)(3)~~ "Client" means any individual receiving
20 services in any substance abuse or mental health facility,
21 program, or service, which facility, program, or service is
22 operated, funded, or regulated by the agency and the
23 department or regulated by the agency.

24 ~~(3)(4)~~ "Crisis services" means short-term evaluation,
25 stabilization, and brief intervention services provided to a
26 person who is experiencing an acute mental or emotional
27 crisis, as defined in subsection ~~(17)(18)~~, or an acute
28 substance abuse crisis, as defined in subsection ~~(18)(19)~~, to
29 prevent further deterioration of the person's mental health.
30 Crisis services are provided in settings such as a crisis
31 stabilization unit, an inpatient unit, a short-term

1 residential treatment program, a detoxification facility, or
2 an addictions receiving facility; at the site of the crisis by
3 a mobile crisis response team; or at a hospital on an
4 outpatient basis.

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

10 ~~(5)~~(6) "Department" means the Department of Children
11 and Family Services.

12 ~~(6)~~(7) "Director" means any member of the official
13 board of directors reported in the organization's annual
14 corporate report to the Florida Department of State, or, if no
15 such report is made, any member of the operating board of
16 directors. The term excludes members of separate, restricted
17 boards that serve only in an advisory capacity to the
18 operating board.

19 ~~(7)~~(8) "District administrator" means the person
20 appointed by the Secretary of Children and Family Services for
21 the purpose of administering a department service district as
22 set forth in s. 20.19.

23 ~~(8)~~(9) "District plan" or "plan" means the combined
24 district substance abuse and mental health plan approved by
25 the district administrator and governing bodies in accordance
26 with this part.

27 ~~(9)~~(10) "Federal funds" means funds from federal
28 sources for substance abuse or mental health facilities and
29 programs, exclusive of federal funds that are deemed eligible
30 by the Federal Government, and are eligible through state
31 regulation, for matching purposes.

1 ~~(10)~~(11) "Governing body" means the chief legislative
2 body of a county, a board of county commissioners, or boards
3 of county commissioners in counties acting jointly, or their
4 counterparts in a charter government.

5 ~~(11)~~(12) "Health and human services board" or "board"
6 means the board within a district or subdistrict of the
7 department which is established in accordance with s. 20.19
8 and designated in this part for the purpose of assessing the
9 substance abuse and mental health needs of the community and
10 developing a plan to address those needs.

11 ~~(12)~~(13) "Licensed facility" means a facility licensed
12 in accordance with this chapter.

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

19 ~~(14)~~(15) "Managing employee" means the administrator
20 or other similarly titled individual who is responsible for
21 the daily operation of the facility.

22 ~~(15)~~(16) "Mental health services" means those
23 therapeutic interventions and activities that help to
24 eliminate, reduce, or manage symptoms or distress for persons
25 who have severe emotional distress or a mental illness and to
26 effectively manage the disability that often accompanies a
27 mental illness so that the person can recover from the mental
28 illness, become appropriately self-sufficient for his or her
29 age, and live in a stable family or in the community. The term
30 also includes those preventive interventions and activities
31

1 that reduce the risk for or delay the onset of mental
2 disorders. The term includes the following types of services:

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

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

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

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

31

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

12 ~~(16)~~~~(17)~~ "Patient fees" means compensation received by
13 a community substance abuse or mental health facility for
14 services rendered to a specific client from any source of
15 funds, including city, county, state, federal, and private
16 sources.

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

25 ~~(18)~~~~(19)~~ "Person who is experiencing an acute
26 substance abuse crisis" means a child, adolescent, or adult
27 who is experiencing a medical or emotional crisis because of
28 the use of alcoholic beverages or any psychoactive or
29 mood-altering substance. The term includes an individual who
30 meets the criteria for involuntary admission specified in s.
31 397.675.

1 ~~(19)(20)~~ "Premises" means those buildings, beds, and
2 facilities located at the main address of the licensee and all
3 other buildings, beds, and facilities for the provision of
4 acute or residential care which are located in such reasonable
5 proximity to the main address of the licensee as to appear to
6 the public to be under the dominion and control of the
7 licensee.

8 ~~(20)(21)~~ "Program office" means the Mental Health
9 Program Office of the Department of Children and Family
10 Services.

11 ~~(21)(22)~~ "Residential treatment center for children
12 and adolescents" means a 24-hour residential program,
13 including a therapeutic group home, which provides mental
14 health services to emotionally disturbed children or
15 adolescents as defined in s. 394.492(5) or (6) and which is a
16 private for-profit or not-for-profit corporation under
17 contract with the department which offers a variety of
18 treatment modalities in a more restrictive setting.

19 ~~(22)(23)~~ "Residential treatment facility" means a
20 facility providing residential care and treatment to
21 individuals exhibiting symptoms of mental illness who are in
22 need of a 24-hour-per-day, 7-day-a-week structured living
23 environment, respite care, or long-term community placement.

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

31

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

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

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

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

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

27 (d) Rehabilitation services, which include
28 residential, outpatient, day or night, case management,
29 in-home, psychiatric, and medical treatment, and methadone or
30 medication management.

31

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

6 Section 26. Section 394.875, Florida Statutes, is
7 amended to read:

8 394.875 Crisis stabilization units, short-term
9 residential treatment facilities, residential treatment
10 facilities, and residential treatment centers for children and
11 adolescents; authorized services; license required;
12 penalties.--

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

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

29 (c)(b) The purpose of a residential treatment facility
30 is to be a part of a comprehensive treatment program for
31

1 | mentally ill individuals in a community-based residential
2 | setting.

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

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

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

26 | ~~(4)~~ The agency may maintain an action in circuit court
27 | to enjoin the unlawful operation of a crisis stabilization
28 | unit, a residential treatment facility, or a residential
29 | treatment center for children and adolescents if the agency
30 | first gives the violator 14 days' notice of its intention to
31 |

1 ~~maintain such action and if the violator fails to apply for~~
2 ~~licensure within such 14 day period.~~

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

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

9 (b) Nursing homes licensed under chapter 400.

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

12 ~~(4)(6)~~ The department, in consultation with the
13 agency, may establish multiple license classifications for
14 residential treatment facilities.

15 ~~(5)(7)~~ The agency may not issue a license to a crisis
16 stabilization unit unless the unit receives state mental
17 health funds and is affiliated with a designated public
18 receiving facility.

19 ~~(6)(8)~~ The agency may issue a license for a crisis
20 stabilization unit or short-term residential treatment
21 facility, certifying the number of authorized beds for such
22 facility as indicated by existing need and available
23 appropriations. The agency may disapprove an application for
24 such a license if it determines that a facility should not be
25 licensed pursuant to the provisions of this chapter. Any
26 facility operating beds in excess of those authorized by the
27 agency shall, upon demand of the agency, reduce the number of
28 beds to the authorized number, forfeit its license, or provide
29 evidence of a license issued pursuant to chapter 395 for the
30 excess beds.

31

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

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

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

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

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

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

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

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

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

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

1 (g) The licensee agrees that the conditions stated in
2 this subsection must be agreed to in writing by any person
3 acquiring the facility by any means.
4

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

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

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

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

28 ~~(c) Proof of compliance with the level 2 background~~
29 ~~screening requirements of chapter 435 which has been submitted~~
30 ~~within the previous 5 years in compliance with any other~~
31

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

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

25 ~~(e) Each applicant must submit to the agency, with its~~
26 ~~application, a description and explanation of any exclusions,~~
27 ~~permanent suspensions, or terminations of the applicant from~~
28 ~~the Medicare or Medicaid programs. Proof of compliance with~~
29 ~~the requirements for disclosure of ownership and control~~
30 ~~interests under the Medicaid or Medicare programs shall be~~
31 ~~accepted in lieu of this submission.~~

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

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

26 ~~(h) The agency may deny or revoke licensure if the~~
27 ~~applicant:~~

28 ~~1. Has falsely represented a material fact in the~~
29 ~~application required by paragraph (c) or paragraph (f), or has~~
30 ~~omitted any material fact from the application required by~~
31 ~~paragraph (c) or paragraph (f); or~~

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

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

6 Section 27. Section 394.876, Florida Statutes, is
7 repealed.

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

10 394.877 Fees.--

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

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

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

23 394.878 Issuance and renewal of licenses.--

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

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

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

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

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

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

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

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

31 394.879 Rules; enforcement.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (1)(a) A ~~No~~ person may not ~~shall~~ establish, conduct,
16 or maintain a hospital, ambulatory surgical center, or mobile
17 surgical facility in this state without first obtaining a
18 license under this part.

19 (b)1. It is unlawful for a ~~any~~ person to use or
20 advertise to the public, in any way or by any medium
21 whatsoever, any facility as a "hospital," "ambulatory surgical
22 center," or "mobile surgical facility" unless such facility
23 has first secured a license under the provisions of this part.

24 2. ~~Nothing in~~ This part does not apply ~~applies~~ to
25 veterinary hospitals or to commercial business establishments
26 using the word "hospital," "ambulatory surgical center," or
27 "mobile surgical facility" as a part of a trade name if no
28 treatment of human beings is performed on the premises of such
29 establishments.

30 3. By December 31, 2004, the agency shall submit a
31 report to the President of the Senate and the Speaker of the

1 House of Representatives recommending whether it is in the
2 public interest to allow a hospital to license or operate an
3 emergency department located off the premises of the hospital.
4 If the agency finds it to be in the public interest, the
5 report shall also recommend licensure criteria for such
6 medical facilities, including criteria related to quality of
7 care and, if deemed necessary, the elimination of the
8 possibility of confusion related to the service capabilities
9 of such facility in comparison to the service capabilities of
10 an emergency department located on the premises of the
11 hospital. Until July 1, 2005, additional emergency departments
12 located off the premises of licensed hospitals may not be
13 authorized by the agency.

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

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

26 ~~(c) A license, unless sooner suspended or revoked,~~
27 ~~shall automatically expire 2 years from the date of issuance~~
28 ~~and shall be renewable biennially upon application for renewal~~
29 ~~and payment of the fee prescribed by s. 395.004(2), provided~~
30 ~~the applicant and licensed facility meet the requirements~~
31 ~~established under this part and in rules. An application for~~

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

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

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

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

30 ~~(3)(a) Each license shall be valid only for the person~~
31 ~~to whom it is issued and shall not be sold, assigned, or~~

1 ~~otherwise transferred, voluntarily or involuntarily. A~~
2 ~~license is only valid for the premises for which it was~~
3 ~~originally issued.~~

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

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

27 ~~(7)(4)~~ The agency shall issue a license which
28 specifies the service categories and the number of hospital
29 beds in each bed category for which a license is received.
30 Such information shall be listed on the face of the license.
31 All beds which are not covered by any specialty-bed-need

1 methodology shall be specified as general beds. A licensed
2 facility shall not operate a number of hospital beds greater
3 than the number indicated by the agency on the face of the
4 license without approval from the agency under conditions
5 established by rule.

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

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

15 ~~(9)(6)~~ ~~A No~~ specialty hospital may not ~~shall~~ provide
16 any service or regularly serve any population group beyond
17 those services or groups specified in its license.

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

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

25 (a) A license;

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

28 (c) Licensure approval limited to a facility,
29 building, or portion thereof, or a service, within a given
30 premises.

31

1 Section 35. Section 395.004, Florida Statutes, is
2 amended to read:

3 395.004 ~~Application for license, Fees; expenses.--~~

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

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

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

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

31

1 Section 36. Section 395.0055, Florida Statutes, is
2 repealed.

3 Section 37. Section 395.0161, Florida Statutes, is
4 amended to read:

5 395.0161 Licensure inspection.--

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

9 ~~(a) Inspections directed by the Health Care Financing~~
10 ~~Administration.~~

11 ~~(b) Validation inspections.~~

12 ~~(c) Lifesafety inspections.~~

13 ~~(d) Licensure complaint investigations, including full~~
14 ~~licensure investigations with a review of all licensure~~
15 ~~standards as outlined in the administrative rules. Complaints~~
16 ~~received by the agency from individuals, organizations, or~~
17 ~~other sources are subject to review and investigation by the~~
18 ~~agency.~~

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

20 ~~(f)~~ inspections of mobile surgical facilities at each
21 time a facility establishes a new location, prior to the
22 admission of patients. However, such inspections shall not be
23 required when a mobile surgical facility is moved temporarily
24 to a location where medical treatment will not be provided.

25 (2) The agency shall accept, in lieu of its own
26 periodic inspections for licensure, the survey or inspection
27 of an accrediting organization, provided the accreditation of
28 the licensed facility is not provisional and provided the
29 licensed facility authorizes release of, and the agency
30 receives the report of, the accrediting organization. The
31 agency shall develop, and adopt by rule, criteria for

1 accepting survey reports of accrediting organizations in lieu
2 of conducting a state licensure inspection.

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

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

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

17 (4) The agency shall coordinate all periodic
18 inspections for licensure made by the agency to ensure that
19 the cost to the facility of such inspections and the
20 disruption of services by such inspections is minimized.

21 Section 38. Section 395.0162, Florida Statutes, is
22 repealed.

23 Section 39. Subsections (2) and (3) of section
24 395.0163, Florida Statutes, are amended to read:

25 395.0163 Construction inspections; plan submission and
26 approval; fees.--

27 (2)~~(a)~~ The agency is authorized to charge an initial
28 fee of \$2,000 for review of plans and construction on all
29 projects, no part of which is refundable. The agency may also
30 collect a fee, not to exceed 1 percent of the estimated
31 construction cost or the actual cost of review, whichever is

1 less, for the portion of the review which encompasses initial
2 review through the initial revised construction document
3 review. The agency is further authorized to collect its
4 actual costs on all subsequent portions of the review and
5 construction inspections. The initial fee payment shall
6 accompany the initial submission of plans and specifications.
7 Any subsequent payment that is due is payable upon receipt of
8 the invoice from the agency.

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

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

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

23 395.0197 Internal risk management program.--

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

1 ~~hospitals licensed facilities~~, unless the hospitals facilities
2 are under one corporate ownership or the risk management
3 programs are in rural hospitals.

4 Section 41. Section 395.0199, Florida Statutes, is
5 amended to read:

6 395.0199 Private utilization review.--

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

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

10 (b) Foster greater coordination between providers and
11 health insurers performing utilization review.

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

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

22 (2) The requirements of part II of chapter 408 apply
23 to the provision of services that necessitate registration or
24 licensure pursuant to this section and part II of chapter 408
25 and to persons registered by or applying for such registration
26 from the Agency for Health Care Administration pursuant to
27 this section. However, an applicant for registration is exempt
28 from the provisions of ss. 408.810(5), (6), (7), (8), (9), and
29 (10) and 408.811. A private review agent conducting
30 utilization review as to health care services performed or
31

1 ~~proposed to be performed in this state shall register with the~~
2 ~~agency in accordance with this section.~~

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

14 (4) ~~Each applicant for registration must comply with~~
15 ~~the following requirements:~~

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

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

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

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

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

25 ~~(e) Each applicant must submit to the agency, with its~~
26 ~~application, a description and explanation of any exclusions,~~
27 ~~permanent suspensions, or terminations of the applicant from~~
28 ~~the Medicare or Medicaid programs. Proof of compliance with~~
29 ~~the requirements for disclosure of ownership and control~~
30 ~~interests under the Medicaid or Medicare programs shall be~~
31 ~~accepted in lieu of this submission.~~

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

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

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

28 ~~1. Has falsely represented a material fact in the~~
29 ~~application required by paragraph (c) or paragraph (f), or has~~
30 ~~omitted any material fact from the application required by~~
31 ~~paragraph (c) or paragraph (f); or~~

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

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

6 (4)(5) Registration shall include the following:

7 (a) A description of the review policies and
8 procedures to be used in evaluating proposed or delivered
9 hospital care.

10 (b) The name, address, and telephone number of the
11 utilization review agent performing utilization review, who
12 shall be at least:

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

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

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

1 mental health services, and shall include the written
2 evaluation and findings of the reviewing physician.

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

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

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

17 (g) Updates of any material changes to review policies
18 or procedures.

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

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

31

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

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

19 ~~(8)(10)~~ The agency shall adopt rules to implement the
20 provisions of this section.

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

23 395.1046 Complaint investigation procedures.--

24 (1) In accordance with s. 408.811, the agency shall
25 investigate any complaint against a hospital for any violation
26 of s. 395.1041 that the agency reasonably believes to be
27 legally sufficient. A complaint is legally sufficient if it
28 contains ultimate facts which show that a violation of this
29 chapter, or any rule adopted under this chapter by the agency,
30 has occurred. The agency may investigate, or continue to
31 investigate, and may take appropriate final action on a

1 | complaint, even though the original complainant withdraws his
2 | or her complaint or otherwise indicates his or her desire not
3 | to cause it to be investigated to completion. When an
4 | investigation of any person or facility is undertaken, the
5 | agency shall notify such person in writing of the
6 | investigation and inform the person or facility in writing of
7 | the substance, the facts which show that a violation has
8 | occurred, and the source of any complaint filed against him or
9 | her. The agency may conduct an investigation without
10 | notification to any person if the act under investigation is a
11 | criminal offense. ~~The agency shall have access to all records~~
12 | ~~necessary for the investigation of the complaint.~~

13 | Section 43. Subsections (1), (7), and (8) of section
14 | 395.1055, Florida Statutes, are amended to read:

15 | 395.1055 Rules and enforcement.--

16 | (1) The agency shall adopt rules pursuant to ss.
17 | 120.536(1) and 120.54 to implement the provisions of this part
18 | and part II of chapter 408, which shall include reasonable and
19 | fair minimum standards for ensuring that:

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

24 | (b) Infection control, housekeeping, sanitary
25 | conditions, and medical record procedures that will adequately
26 | protect patient care and safety are established and
27 | implemented.

28 | (c) A comprehensive emergency management plan is
29 | prepared and updated annually. Such standards must be
30 | included in the rules adopted by the agency after consulting
31 | with the Department of Community Affairs. At a minimum, the

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

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

21 (e) Licensed facility beds conform to minimum space,
22 equipment, and furnishings standards as specified by the
23 department.

24 (f) All hospitals submit such data as necessary to
25 conduct certificate-of-need reviews required under ss.
26 408.031-408.045. Such data shall include, but shall not be
27 limited to, patient origin data, hospital utilization data,
28 type of service reporting, and facility staffing data. The
29 agency shall not collect data that identifies or could
30 disclose the identity of individual patients. The agency shall
31

1 utilize existing uniform statewide data sources when available
2 and shall minimize reporting costs to hospitals.

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

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

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

31

1 Section 44. Section 395.1065, Florida Statutes, is
2 amended to read:

3 395.1065 Criminal and administrative penalties;
4 injunctions; ~~emergency orders~~; moratorium.--

5 ~~(1) Any person establishing, conducting, managing, or~~
6 ~~operating any facility without a license under this part is~~
7 ~~guilty of a misdemeanor and, upon conviction, shall be fined~~
8 ~~not more than \$500 for the first offense and not more than~~
9 ~~\$1,000 for each subsequent offense, and each day of continuing~~
10 ~~violation after conviction shall be considered a separate~~
11 ~~offense.~~

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

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

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

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

28 3. Any previous violations of the licensee.

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

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

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

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

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

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

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

31

1 395.10973 Powers and duties of the agency.--It is the
2 function of the agency to:

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

6 Section 46. Section 395.10974, Florida Statutes, is
7 amended to read:

8 395.10974 Health care risk managers; qualifications,
9 licensure, fees.--

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

21 (a) Applicable standards of health care risk
22 management.

23 (b) Applicable federal, state, and local health and
24 safety laws and rules.

25 (c) General risk management administration.

26 (d) Patient care.

27 (e) Medical care.

28 (f) Personal and social care.

29 (g) Accident prevention.

30 (h) Departmental organization and management.

31 (i) Community interrelationships.

1 (j) Medical terminology.

2

3 Each applicant for licensure must comply with all provisions
4 of part II of chapter 408, with the exception of ss. 408.809,
5 408.810, and 408.811. The agency may require such additional
6 information, from the applicant or any other person, as may be
7 reasonably required to verify the information contained in the
8 application.

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

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

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

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

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

20 3. Has obtained 1 year of practical experience in
21 health care risk management.

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

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

5 Section 47. Paragraph (1) of subsection (3) of section
6 395.1041, Florida Statutes, is amended to read:

7 395.1041 Access to emergency services and care.--

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

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

21 Section 48. Section 395.10411, Florida Statutes, is
22 created to read:

23 395.10411 Duty of a facility to carry out the advance
24 directive of a patient.--

25 (1) When a person who has a terminal condition or an
26 end-stage condition or is in a persistent vegetative state and
27 who has an advance directive is a patient in a facility
28 licensed under this chapter which is providing health care
29 services to the person, the facility must carry out the
30 advance directive or must transfer the patient pursuant to s.
31 765.1105 to a facility that will carry out the advance

1 directive. The cost of transferring a patient for the purpose
2 of carrying out an advance directive shall be paid by the
3 facility from which the patient is transferred, and neither
4 the patient nor the receiving facility is responsible for any
5 part of such cost. A facility that fails to carry out a
6 patient's advance directive will not receive payment of any
7 state funds for life-prolonging treatment provided to the
8 patient.

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

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

26 Section 49. Section 765.1105, Florida Statutes, is
27 amended to read:

28 765.1105 Transfer of a patient.--

29 (1) A health care provider or facility that refuses to
30 comply with a patient's advance directive, or the treatment
31 decision of his or her surrogate, must, within 48 hours after

1 a determination by the attending physician that the patient's
2 condition is such that the advance directive applies, shall
3 ~~make reasonable efforts to~~ transfer the patient to another
4 health care provider or facility that will comply with the
5 directive or treatment decision. This chapter does not require
6 a health care provider or facility to commit any act which is
7 contrary to the provider's or facility's moral or ethical
8 beliefs, if the patient:

- 9 (a) Is not in an emergency condition; and
10 (b) Has received written information upon admission
11 informing the patient of the policies of the health care
12 provider or facility regarding such moral or ethical beliefs.

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

- 19 (a) Transfer the patient to another health care
20 provider or facility. The health care provider or facility
21 shall pay the costs for transporting the patient to another
22 health care provider or facility; or
23 (b) If the patient has not been transferred, carry out
24 the wishes of the patient or the patient's surrogate, unless
25 the provisions of s. 765.105 apply.

26 Section 50. Section 765.1021, Florida Statutes, is
27 created to read:

28 765.1021 Advance directive as part of a patient's
29 medical record.--To encourage individuals to complete an
30 advance directive and to inform individuals about options for
31 care available to them at the end of life, the Legislature

1 encourages primary physicians and patients to discuss advance
2 directives and end-of-life care in a physician's office
3 setting on a nonemergency basis. If a patient completes an
4 advance directive and gives a copy of it to a physician, the
5 patient's advance directive must become part of the patient's
6 medical record.

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

9 765.304 Procedure for living will.--

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

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

28 395.10975 Grounds for denial, ~~suspension,~~ or
29 revocation of a health care risk manager's license;
30 administrative fine.--

31

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

5 (a) Imposition of an administrative fine not to exceed
6 \$2,500 for each count or separate offense.

7 (b) Issuance of a reprimand.

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

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

15 400.021 Definitions.--When used in this part, unless
16 the context otherwise requires, the term:

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

1 representative. The facility may not use an agency or
2 temporary registered nurse to satisfy the foregoing
3 requirement and must document the institutional
4 responsibilities that have been delegated to the registered
5 nurse.

6 Section 54. Subsections (5) and (20) of section
7 400.021, Florida Statutes, are repealed.

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

10 400.022 Residents' rights.--

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

23 Section 56. Paragraph (b) of subsection (1) of section
24 400.051, Florida Statutes, is amended to read:

25 400.051 Homes or institutions exempt from the
26 provisions of this part.--

27 (1) The following shall be exempt from the provisions
28 of this part:

29 (b) Any hospital, as defined in s. 395.002 ~~s.~~
30 ~~395.002(11)~~, that is licensed under chapter 395.

31

1 Section 57. Section 400.062, Florida Statutes, is
2 amended to read:

3 400.062 License required; fee; disposition; display;
4 transfer.--

5 (1) The requirements of part II of chapter 408 apply
6 to the provision of services that necessitate licensure
7 pursuant to this part and part II of chapter 408 and to
8 entities licensed by or applying for such licensure from the
9 Agency for Health Care Administration pursuant to this part.
10 ~~It is unlawful to operate or maintain a facility without first~~
11 ~~obtaining from the agency a license authorizing such~~
12 ~~operation.~~

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

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

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

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

26 ~~(b)~~ The resident protection fee collected shall be
27 deposited in the Resident Protection Trust Fund for the sole
28 purpose of paying, in accordance with the provisions of s.
29 400.063, for the appropriate alternate placement, care, and
30 treatment of a resident removed from a nursing home facility
31 on a temporary, emergency basis or for the maintenance and

1 care of residents in a nursing home facility pending removal
2 and alternate placement.

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

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

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

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

16 400.063 Resident Protection Trust Fund.--

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

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

11 Section 59. Section 400.071, Florida Statutes, is
12 amended to read:

13 400.071 Application for license.--

14 ~~(1) An application for a license as required by s.~~
15 ~~400.062 shall be made to the agency on forms furnished by it~~
16 ~~and shall be accompanied by the appropriate license fee.~~

17 (1)(2) The application shall be under oath and shall
18 contain the following:

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

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

31

1 ~~professional service, firm, association, partnership, or~~
2 ~~corporation in which such interest is held.~~

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

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

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

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

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

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

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

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

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

29 ~~(a) Upon receipt of a completed, signed, and dated~~
30 ~~application, the agency shall require background screening of~~
31 ~~the applicant, in accordance with the level 2 standards for~~

1 ~~screening set forth in chapter 435. As used in this~~
2 ~~subsection, the term "applicant" means the facility~~
3 ~~administrator, or similarly titled individual who is~~
4 ~~responsible for the day to day operation of the licensed~~
5 ~~facility, and the facility financial officer, or similarly~~
6 ~~titled individual who is responsible for the financial~~
7 ~~operation of the licensed facility.~~

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

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

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 license may be granted to the applicant upon the~~
5 ~~agency's receipt of a report of the results of the Federal~~
6 ~~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 ~~disclosure of ownership and control interest requirements of~~
23 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
24 ~~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 shall 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) An application for license renewal must contain~~
13 ~~the information required under paragraphs (c) and (f).~~

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

25 ~~(2)(6)~~ If the applicant offers continuing care
26 agreements as defined in chapter 651, proof shall be furnished
27 that such applicant has obtained a certificate of authority as
28 required for operation under that chapter.

29 ~~(3)(7)~~ As a condition of licensure, each licensee,
30 except one offering continuing care agreements as defined in
31 chapter 651, must agree to accept recipients of Title XIX of

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

7 | ~~(4)(8) The agency may not issue a license to a nursing~~
8 | ~~home that fails to receive a certificate of need under the~~
9 | ~~provisions of ss. 408.031-408.045.~~ It is the intent of the
10 | Legislature that, in reviewing a certificate-of-need
11 | application to add beds to an existing nursing home facility,
12 | preference be given to the application of a licensee who has
13 | been awarded a Gold Seal as provided for in s. 400.235, if the
14 | applicant otherwise meets the review criteria specified in s.
15 | 408.035.

16 | ~~(5)(9) The agency may develop an abbreviated survey~~
17 | ~~for licensure renewal applicable to a licensee that has~~
18 | ~~continuously operated as a nursing facility since 1991 or~~
19 | ~~earlier, has operated under the same management for at least~~
20 | ~~the preceding 30 months, and has had during the preceding 30~~
21 | ~~months no class I or class II deficiencies.~~

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

31 |

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), and (16) 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
22 Facilities that have been awarded a Gold Seal under the
23 program established in s. 400.235 may develop a plan to
24 provide certified nursing assistant training as prescribed by
25 federal regulations and state rules and may apply to the
26 agency for approval of their program.

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

29 400.17 Bribes, kickbacks, certain solicitations
30 prohibited.--

31

1 (4) Solicitation of contributions of any kind in a
2 threatening, coercive, or unduly forceful manner by or on
3 behalf of a nursing home by any agent, employee, owner, or
4 representative of a nursing home shall be grounds for denial,
5 ~~suspension~~, or revocation of the license for any nursing home
6 on behalf of which such contributions were solicited.

7 (5) The admission, maintenance, or treatment of a
8 nursing home resident whose care is supported in whole or in
9 part by state funds may not be made conditional upon the
10 receipt of any manner of contribution or donation from any
11 person. However, this may not be construed to prohibit the
12 offer or receipt of contributions or donations to a nursing
13 home which are not related to the care of a specific resident.
14 Contributions solicited or received in violation of this
15 subsection shall be grounds for denial, ~~suspension~~, or
16 revocation of a license for any nursing home on behalf of
17 which such contributions were solicited.

18 Section 68. Section 400.179, Florida Statutes, is
19 amended to read:

20 400.179 ~~Sale or transfer of ownership of a nursing~~
21 ~~facility~~; Liability for Medicaid underpayments and
22 overpayments.--

23 (1) It is the intent of the Legislature to protect the
24 rights of nursing home residents and the security of public
25 funds when a nursing facility is sold or the ownership is
26 transferred.

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

31

1 ~~(3) The transferor shall notify the agency in writing~~
2 ~~at least 90 days prior to the date of transfer of ownership.~~
3 ~~The transferor shall be responsible and liable for the lawful~~
4 ~~operation of the nursing facility and the welfare of the~~
5 ~~residents domiciled in the facility until the date the~~
6 ~~transferee is licensed by the agency. The transferor shall be~~
7 ~~liable for any and all penalties imposed against the facility~~
8 ~~for violations occurring prior to the date of transfer of~~
9 ~~ownership.~~

10 ~~(4) The transferor shall, prior to transfer of~~
11 ~~ownership, repay or make arrangements to repay to the agency~~
12 ~~or the Department of Children and Family Services any amounts~~
13 ~~owed to the agency or the department. Should the transferor~~
14 ~~fail to repay or make arrangements to repay the amounts owed~~
15 ~~to the agency or the department prior to the transfer of~~
16 ~~ownership, the issuance of a license to the transferee shall~~
17 ~~be delayed until repayment or until arrangements for repayment~~
18 ~~are made.~~

19 (2)(5) Because any transfer of a nursing facility may
20 expose the fact that Medicaid may have underpaid or overpaid
21 the transferor, and because in most instances, any such
22 underpayment or overpayment can only be determined following a
23 formal field audit, the liabilities for any such underpayments
24 or overpayments shall be as follows:

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

28 (b) Without regard to whether the transferor had
29 leased or owned the nursing facility, the transferor shall
30 remain liable to the Medicaid program for all Medicaid
31

1 overpayments received during the transferor's period of
2 operation of the facility, regardless of when determined.

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

- 17 1. Medicaid rate changes or adjustments;
- 18 2. Any depreciation recapture;
- 19 3. Any recapture of fair rental value system indexing;

20 or

- 21 4. Audits completed by the agency.

22
23 The transferor shall remain liable for any such Medicaid
24 overpayments that were not readily identifiable 90 days in
25 advance of the nursing facility transfer.

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

- 28 1. The transferee shall, as a condition to being
29 issued a license by the agency, acquire, maintain, and provide
30 proof to the agency of a bond with a term of 30 months,
31 renewable annually, in an amount not less than the total of 3

1 months Medicaid payments to the facility computed on the basis
2 of the preceding 12-month average Medicaid payments to the
3 facility.

4 2. A leasehold licensee may meet the requirements of
5 subparagraph 1. by payment of a nonrefundable fee, paid at
6 initial licensure, paid at the time of any subsequent change
7 of ownership, and paid at the time of any subsequent change of
8 ownership, and paid annually thereafter ~~at the time of any~~
9 ~~subsequent annual license renewal~~, in the amount of 2 percent
10 of the total of 3 months' Medicaid payments to the facility
11 computed on the basis of the preceding 12-month average
12 Medicaid payments to the facility. If a preceding 12-month
13 average is not available, projected Medicaid payments may be
14 used. The fee shall be deposited into the Health Care Trust
15 Fund and shall be accounted for separately as a Medicaid
16 nursing home overpayment account. These fees shall be used at
17 the sole discretion of the agency to repay nursing home
18 Medicaid overpayments. Payment of this fee shall not release
19 the licensee from any liability for any Medicaid overpayments,
20 nor shall payment bar the agency from seeking to recoup
21 overpayments from the licensee and any other liable party. As
22 a condition of exercising this lease bond alternative,
23 licensees paying this fee must maintain an existing lease bond
24 through the end of the 30-month term period of that bond. The
25 agency is herein granted specific authority to promulgate all
26 rules pertaining to the administration and management of this
27 account, including withdrawals from the account, subject to
28 federal review and approval. This provision shall take effect
29 upon becoming law and shall apply to any leasehold license
30 application.

31

1 a. The financial viability of the Medicaid nursing
2 home overpayment account shall be determined by the agency
3 through annual review of the account balance and the amount of
4 total outstanding, unpaid Medicaid overpayments owing from
5 leasehold licensees to the agency as determined by final
6 agency audits.

7 b. The agency, in consultation with the Florida Health
8 Care Association and the Florida Association of Homes for the
9 Aging, shall study and make recommendations on the minimum
10 amount to be held in reserve to protect against Medicaid
11 overpayments to leasehold licensees and on the issue of
12 successor liability for Medicaid overpayments upon sale or
13 transfer of ownership of a nursing facility. The agency shall
14 submit the findings and recommendations of the study to the
15 Governor, the President of the Senate, and the Speaker of the
16 House of Representatives by January 1, 2003.

17 3. The leasehold licensee may meet the bond
18 requirement through other arrangements acceptable to the
19 agency. The agency is herein granted specific authority to
20 promulgate rules pertaining to lease bond arrangements.

21 4. All existing nursing facility licensees, operating
22 the facility as a leasehold, shall acquire, maintain, and
23 provide proof to the agency of the 30-month bond required in
24 subparagraph 1., above, on and after July 1, 1993, for each
25 license renewal.

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

31

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

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

18 400.18 Closing of nursing facility.--

19 (1) ~~Whenever a licensee voluntarily discontinues~~
20 ~~operation, and during the period when it is preparing for such~~
21 ~~discontinuance, it shall inform the agency not less than 90~~
22 ~~days prior to the discontinuance of operation.~~ The licensee
23 ~~also~~ shall inform the resident or the next of kin, legal
24 representative, or agency acting on behalf of the resident of
25 the fact, and the proposed time, of ~~such~~ discontinuance of
26 operation and give at least 90 days' notice so that suitable
27 arrangements may be made for the transfer and care of the
28 resident. In the event any resident has no such person to
29 represent him or her, the licensee shall be responsible for
30 securing a suitable transfer of the resident before the
31 discontinuance of operation. The agency shall be responsible

1 for arranging for the transfer of those residents requiring
2 transfer who are receiving assistance under the Medicaid
3 program.

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

7 Section 70. Subsections (1), (2), and (3) of section
8 400.19, Florida Statutes, are amended to read:

9 400.19 Right of entry and inspection.--

10 (1) In accordance with part II of chapter 408, the
11 agency and any duly designated officer or employee thereof or
12 a member of the State Long-Term Care Ombudsman Council or the
13 local long-term care ombudsman council shall have the right to
14 enter upon and into the premises of any facility licensed
15 pursuant to this part, or any distinct nursing home unit of a
16 hospital licensed under chapter 395 or any freestanding
17 facility licensed under chapter 395 that provides extended
18 care or other long-term care services, at any reasonable time
19 in order to determine the state of compliance with the
20 provisions of this part and rules in force pursuant thereto.
21 ~~The right of entry and inspection shall also extend to any~~
22 ~~premises which the agency has reason to believe is being~~
23 ~~operated or maintained as a facility without a license, but no~~
24 ~~such entry or inspection of any premises shall be made without~~
25 ~~the permission of the owner or person in charge thereof,~~
26 ~~unless a warrant is first obtained from the circuit court~~
27 ~~authorizing same. Any application for a facility license or~~
28 ~~renewal thereof, made pursuant to this part, shall constitute~~
29 ~~permission for and complete acquiescence in any entry or~~
30 ~~inspection of the premises for which the license is sought, in~~
31 ~~order to facilitate verification of the information submitted~~

1 ~~on or in connection with the application; to discover,~~
2 ~~investigate, and determine the existence of abuse or neglect;~~
3 ~~or to elicit, receive, respond to, and resolve complaints.~~ The
4 agency shall, within 60 days after receipt of a complaint made
5 by a resident or resident's representative, complete its
6 investigation and provide to the complainant its findings and
7 resolution.

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

19 (3) The agency shall every 15 months conduct at least
20 one unannounced inspection to determine compliance by the
21 licensee with statutes, and with rules promulgated under the
22 provisions of those statutes, governing minimum standards of
23 construction, quality and adequacy of care, and rights of
24 residents. The survey shall be conducted every 6 months for
25 the next 2-year period if the facility has been cited for a
26 class I deficiency, has been cited for two or more class II
27 deficiencies arising from separate surveys or investigations
28 within a 60-day period, or has had three or more substantiated
29 complaints within a 6-month period, each resulting in at least
30 one class I or class II deficiency. In addition to any other
31 fees or fines in this part, the agency shall assess a fine for

1 each facility that is subject to the 6-month survey cycle. The
2 fine for the 2-year period shall be \$6,000, ~~one half to be~~
3 ~~paid at the completion of each survey~~. The agency may adjust
4 this fine by the change in the Consumer Price Index, based on
5 the 12 months immediately preceding the increase, to cover the
6 cost of the additional surveys. The agency shall verify
7 through subsequent inspection that any deficiency identified
8 during ~~the annual~~ inspection is corrected. However, the
9 agency may verify the correction of a ~~class III or~~ class IV
10 deficiency unrelated to resident rights or resident care
11 without reinspecting the facility if adequate written
12 documentation has been received from the facility, which
13 provides assurance that the deficiency has been corrected. The
14 giving or causing to be given of advance notice of such
15 unannounced inspections by an employee of the agency to any
16 unauthorized person shall constitute cause for suspension of
17 not fewer than 5 working days according to the provisions of
18 chapter 110.

19 Section 71. Section 400.191, Florida Statutes, is
20 amended to read:

21 400.191 Availability, distribution, and posting of
22 reports and records.--

23 (1) The agency shall provide information to the public
24 about all of the licensed nursing home facilities operating in
25 the state. The agency shall, within 60 days after an ~~annual~~
26 inspection visit or within 30 days after any interim visit to
27 a facility, send copies of the inspection reports to the local
28 long-term care ombudsman council, the agency's local office,
29 and a public library or the county seat for the county in
30 which the facility is located. The agency may provide
31

1 electronic access to inspection reports as a substitute for
2 sending copies.

3 (2) The agency shall publish the Guide to Nursing
4 Homes in Florida ~~provide additional information~~ in
5 consumer-friendly printed and electronic formats to assist
6 consumers and their families in comparing and evaluating
7 nursing home facilities.

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

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

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

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

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

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

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

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

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

31

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

5 10. Recreational and other programs available at each
6 facility.

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

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

12 13. Survey and deficiency information contained on the
13 Online Survey Certification and Reporting (OSCAR) system of
14 the federal Centers for Medicare and Medicaid Services Health
15 ~~Care Financing Administration~~, including recertification
16 ~~annual~~ survey, revisit, and complaint survey information, for
17 each facility for the past 30 45 months. For noncertified
18 nursing homes, state survey and deficiency information,
19 including licensure annual survey, revisit, and complaint
20 survey information for the past 30 45 months shall be
21 provided.

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

1 presented in either numeric or symbolic form for the intended
2 consumer audience.

3 (b) The agency shall provide the following information
4 in printed form:

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

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

9 3. The current owner or owners of the facility's
10 license and the year that entity became the owner of the
11 license.

12 4. The total number of beds, and of private and
13 semiprivate rooms, in each facility.

14 5. The religious affiliation, if any, of each
15 facility.

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

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

22 8. Whether or not each facility accepts Medicare or
23 Medicaid recipients or insurance, health maintenance
24 organization, Veterans Administration, CHAMPUS program, or
25 workers' compensation coverage.

26 9. Recreational programs, special care units, and
27 other programs available at each facility.

28 10. The Internet address for the site where more
29 detailed information can be seen.

30

31

1 11. A statement advising consumers that each facility
2 will have its own policies and procedures related to
3 protecting resident property.

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

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

20 (d) The agency may provide the following additional
21 information on an Internet site or in printed form as the
22 information becomes available:

- 23 1. The licensure status history of each facility.
- 24 2. The rating history of each facility.
- 25 3. The regulatory history of each facility, which may
26 include federal sanctions, state sanctions, federal fines,
27 state fines, and other actions.
- 28 4. Whether the facility currently possesses the Gold
29 Seal designation awarded pursuant to s. 400.235.
- 30 5. Internet links to the Internet sites of the
31 facilities or their affiliates.

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

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

29 (b) Upon publication of each quarterly Guide to
30 Nursing Homes in Florida ~~watch list~~, the agency must transmit
31 a copy of all pages listing the facility the watch list to

1 each nursing home facility ~~by mail and must make the watch~~
2 ~~list available on the agency's Internet website.~~

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

10 (5) Every nursing home facility licensee shall:

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

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

21 2. A copy of the most recent version of all pages
22 listing the facility in the Guide to Nursing Homes in Florida
23 ~~the Florida Nursing Home Guide Watch List.~~

24 (b) Upon request, provide to any person who has
25 completed a written application with an intent to be admitted
26 to, or to any resident of, such nursing home, or to any
27 relative, spouse, or guardian of such person, a copy of the
28 last inspection report pertaining to the nursing home and
29 issued by the agency, provided the person requesting the
30 report agrees to pay a reasonable charge to cover copying
31 costs.

1 (6) The agency may adopt rules as necessary to
2 administer this section.

3 Section 72. Section 400.20, Florida Statutes, is
4 amended to read:

5 400.20 Licensed nursing home administrator
6 required.--~~A No~~ nursing home may not ~~shall~~ operate except
7 under the supervision of a licensed nursing home
8 administrator, and ~~a no~~ person may not ~~shall~~ be a nursing home
9 administrator unless he or she holds ~~is the holder of~~ a
10 current license as provided in chapter 468.

11 Section 73. Subsection (4) of section 400.211, Florida
12 Statutes, is amended to read:

13 400.211 Persons employed as nursing assistants;
14 certification requirement.--

15 (4) When employed by a nursing home facility for a
16 12-month period or longer, a nursing assistant, to maintain
17 certification, shall submit to a performance review every 12
18 months and must receive regular inservice education based on
19 the outcome of such reviews. The inservice training must:

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

24 (b) Include, at a minimum:

- 25 1. Techniques for assisting with eating and proper
26 feeding;
27 2. Principles of adequate nutrition and hydration;
28 3. Techniques for assisting and responding to the
29 cognitively impaired resident or the resident with difficult
30 behaviors;

31

1 4. Techniques for caring for the resident at the
2 end-of-life; and

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

5 (c) Address areas of weakness as determined in nursing
6 assistant performance reviews and may address the special
7 needs of residents as determined by the nursing home facility
8 staff.

9
10 Costs associated with this training may not be reimbursed from
11 additional Medicaid funding through interim rate adjustments.

12 Section 74. Subsections (2), (7), and (8) of section
13 400.23, Florida Statutes, are amended, and subsection (10) is
14 added to that section, to read:

15 400.23 Rules; evaluation and deficiencies; licensure
16 status.--

17 (2) Pursuant to the intention of the Legislature, the
18 agency, in consultation with the Department of Health and the
19 Department of Elderly Affairs, shall adopt and enforce rules
20 to implement this part and part II of chapter 408, which shall
21 include reasonable and fair criteria in relation to:

22 (a) The location of the facility and housing
23 conditions that will ensure the health, safety, and comfort of
24 residents, including an adequate call system. In making such
25 rules, the agency shall be guided by criteria recommended by
26 nationally recognized reputable professional groups and
27 associations with knowledge of such subject matters. The
28 agency shall update or revise such criteria as the need
29 arises. The agency may require alterations to a building if it
30 determines that an existing condition constitutes a distinct
31 hazard to life, health, or safety. In performing any

1 inspections of facilities authorized by this part, the agency
2 may enforce the special-occupancy provisions of the Florida
3 Building Code and the Florida Fire Prevention Code which apply
4 to nursing homes. The agency is directed to provide assistance
5 to the Florida Building Commission in updating the
6 construction standards of the code relative to nursing homes.

7 (b) The number and qualifications of all personnel,
8 including management, medical, nursing, and other professional
9 personnel, and nursing assistants, orderlies, and support
10 personnel, having responsibility for any part of the care
11 given residents.

12 (c) All sanitary conditions within the facility and
13 its surroundings, including water supply, sewage disposal,
14 food handling, and general hygiene which will ensure the
15 health and comfort of residents.

16 (d) The equipment essential to the health and welfare
17 of the residents.

18 (e) A uniform accounting system.

19 (f) The care, treatment, and maintenance of residents
20 and measurement of the quality and adequacy thereof, based on
21 rules developed under this chapter and the Omnibus Budget
22 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
23 1987), Title IV (Medicare, Medicaid, and Other Health-Related
24 Programs), Subtitle C (Nursing Home Reform), as amended.

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

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

16 (h) The availability, distribution, and posting of
17 reports and records pursuant to s. 400.191 and the Gold Seal
18 Program pursuant to s. 400.235.

19 (7) The agency shall, at least every 15 months,
20 evaluate all nursing home facilities and make a determination
21 as to the degree of compliance by each licensee with the
22 established rules adopted under this part as a basis for
23 assigning a licensure status to that facility. The agency
24 shall base its evaluation on the most recent inspection
25 report, taking into consideration findings from other official
26 reports, surveys, interviews, investigations, and inspections.
27 The agency shall assign a licensure status of standard or
28 conditional to each nursing home.

29 (a) A standard licensure status means that a facility
30 has no class I or class II deficiencies and has corrected all
31

1 class III deficiencies within the time established by the
2 agency.

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

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

21 (d) The current licensure status of each facility must
22 be indicated in bold print on the face of the license. A list
23 of the deficiencies of the facility shall be posted in a
24 prominent place that is in clear and unobstructed public view
25 at or near the place where residents are being admitted to
26 that facility. Licensees receiving a conditional licensure
27 status for a facility shall prepare, within 10 working days
28 after receiving notice of deficiencies, a plan for correction
29 of all deficiencies and shall submit the plan to the agency
30 for approval.

31

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

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

6 1. Establish uniform procedures for the evaluation of
7 facilities.

8 2. Provide criteria in the areas referenced in
9 paragraph (c).

10 3. Address other areas necessary for carrying out the
11 intent of this section.

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

1 the facility's residents. The agency shall indicate the
2 classification on the face of the notice of deficiencies as
3 follows:

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

22 (b) A class II deficiency is a deficiency that the
23 agency determines has compromised the resident's ability to
24 maintain or reach his or her highest practicable physical,
25 mental, and psychosocial well-being, as defined by an accurate
26 and comprehensive resident assessment, plan of care, and
27 provision of services. A class II deficiency is subject to a
28 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
29 a patterned deficiency, and \$7,500 for a widespread
30 deficiency. The fine amount shall be doubled for each
31 deficiency if the facility was previously cited for one or

1 more class I or class II deficiencies during the last
2 licensure ~~annual~~ inspection or any inspection or complaint
3 investigation since the last licensure ~~annual~~ inspection. A
4 fine shall be levied notwithstanding the correction of the
5 deficiency.

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

25 (d) A class IV deficiency is a deficiency that the
26 agency determines has the potential for causing no more than a
27 minor negative impact on the resident. If the class IV
28 deficiency is isolated, no plan of correction is required.

29 (10) Agency records, reports, ranking systems,
30 Internet information, and publications must be promptly
31 updated to reflect the most current agency actions.

1 Section 75. Subsections (1) and (2) of section
2 400.241, Florida Statutes, are repealed.

3 Section 76. Subsection (5) of section 400.402, Florida
4 Statutes, is repealed and present subsections (12), (14), and
5 (17) of that section are redesignated as subsections (11),
6 (13), and (16), respectively, and amended to read:

7 400.402 Definitions.--When used in this part, the
8 term:

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

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

21 ~~(13)(14)~~ "Limited nursing services" means acts that
22 may be performed pursuant to part I of chapter 464 by persons
23 licensed thereunder while carrying out their professional
24 duties but limited to those acts which the agency ~~department~~
25 specifies by rule. Acts which may be specified by rule as
26 allowable limited nursing services shall be for persons who
27 meet the admission criteria established by the agency
28 ~~department~~ for assisted living facilities and shall not be
29 complex enough to require 24-hour nursing supervision and may
30 include such services as the application and care of routine
31 dressings, and care of casts, braces, and splints.

1 ~~(16)~~~~(17)~~ "Personal services" means direct physical
2 assistance with or supervision of the activities of daily
3 living and the self-administration of medication and other
4 similar services which the agency ~~department~~ may define by
5 rule. "Personal services" shall not be construed to mean the
6 provision of medical, nursing, dental, or mental health
7 services.

8 Section 77. Section 400.407, Florida Statutes, is
9 amended to read:

10 400.407 License required; fee, display.--

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

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

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

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

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

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

- 1 a. A class I or class II violation;
- 2 b. Three or more repeat or recurring class III
- 3 violations of identical or similar resident care standards as
- 4 specified in rule from which a pattern of noncompliance is
- 5 found by the agency;
- 6 c. Three or more class III violations that were not
- 7 corrected in accordance with the corrective action plan
- 8 approved by the agency;
- 9 d. Violation of resident care standards resulting in a
- 10 requirement to employ the services of a consultant pharmacist
- 11 or consultant dietitian;
- 12 e. Denial, ~~suspension,~~ or revocation of a license for
- 13 another facility under this part in which the applicant for an
- 14 extended congregate care license has at least 25 percent
- 15 ownership interest; or
- 16 f. Imposition of a moratorium ~~on admissions~~ or
- 17 initiation of injunctive proceedings.
- 18 2. Facilities that are licensed to provide extended
- 19 congregate care services shall maintain a written progress
- 20 report on each person who receives such services, which report
- 21 describes the type, amount, duration, scope, and outcome of
- 22 services that are rendered and the general status of the
- 23 resident's health. A registered nurse, or appropriate
- 24 designee, representing the agency shall visit such facilities
- 25 at least quarterly to monitor residents who are receiving
- 26 extended congregate care services and to determine if the
- 27 facility is in compliance with this part, part II of chapter
- 28 408, and ~~with~~ rules that relate to extended congregate care.
- 29 One of these visits may be in conjunction with the regular
- 30 survey. The monitoring visits may be provided through
- 31 contractual arrangements with appropriate community agencies.

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

15 3. Facilities that are licensed to provide extended
16 congregate care services shall:

17 a. Demonstrate the capability to meet unanticipated
18 resident service needs.

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

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

27 d. Adopt and follow policies and procedures that
28 maximize resident independence, dignity, choice, and
29 decisionmaking to permit residents to age in place to the
30 extent possible, so that moves due to changes in functional
31 status are minimized or avoided.

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

6 f. Implement the concept of managed risk.

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

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

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

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

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

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

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

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

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

25 b. The number and characteristics of residents
26 receiving such services.

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

29 d. An analysis of deficiencies cited during licensure
30 inspections.

31

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

4 f. Recommendations for statutory or regulatory
5 changes.

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

11 h. Such other information as the department considers
12 appropriate.

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

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

1 licensure if the facility has been licensed for less than 2
2 years.

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

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

24 (4) In accordance with s. 408.805, an applicant or
25 licensee shall pay a fee for each license application
26 submitted under this part and part II of chapter 408. The
27 amount of the fee shall be established by rule.

28 (a) The biennial license fee required of a facility is
29 \$300 per license, with an additional fee of \$50 per resident
30 based on the total licensed resident capacity of the facility,
31 except that no additional fee will be assessed for beds

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

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

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

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

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

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

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

12 Section 78. Subsection (1) of section 400.4075,
13 Florida Statutes, is amended to read:

14 400.4075 Limited mental health license.--An assisted
15 living facility that serves three or more mental health
16 residents must obtain a limited mental health license.

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

1 Section 79. Section 400.408, Florida Statutes, is
2 amended to read:

3 400.408 Unlicensed facilities; referral of person for
4 residency to unlicensed facility; penalties; verification of
5 licensure status.--

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

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

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

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

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

31

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

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

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

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

1 findings, actions, and recommendations semiannually to the
2 Director of Health Facility Regulation of the agency.

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

11 (a) Any health care practitioner, as defined in s.
12 456.001, who is aware of the operation of an unlicensed
13 facility shall report that facility to the agency. Failure to
14 report a facility that the practitioner knows or has
15 reasonable cause to suspect is unlicensed shall be reported to
16 the practitioner's licensing board.

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

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

29 (d) The employer of any person who is under contract
30 with the agency or department, or the Department of Children
31 and Family Services, and who knowingly refers a person for

1 residency to an unlicensed facility; to a facility the license
2 of which is under denial or has been suspended or revoked; or
3 to a facility that has a moratorium pursuant to s. 408.814 ~~on~~
4 ~~admissions~~ shall be fined and required to prepare a corrective
5 action plan designed to prevent such referrals.

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

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

29 Section 80. Section 400.411, Florida Statutes, is
30 amended to read:

31

1 400.411 Initial application for license; provisional
2 license.--

3 (1) Each applicant for licensure must comply with all
4 provisions of part II of chapter 408 and the following:

5 ~~Application for a license shall be made to the agency on forms~~
6 ~~furnished by it and shall be accompanied by the appropriate~~
7 ~~license fee.~~

8 ~~(2) The applicant may be an individual owner, a~~
9 ~~corporation, a partnership, a firm, an association, or a~~
10 ~~governmental entity.~~

11 ~~(3) The application must be signed by the applicant~~
12 ~~under oath and must contain the following:~~

13 ~~(a) The name, address, date of birth, and social~~
14 ~~security number of the applicant and the name by which the~~
15 ~~facility is to be known. If the applicant is a firm,~~
16 ~~partnership, or association, the application shall contain the~~
17 ~~name, address, date of birth, and social security number of~~
18 ~~every member thereof. If the applicant is a corporation, the~~
19 ~~application shall contain the corporation's name and address;~~
20 ~~the name, address, date of birth, and social security number~~
21 ~~of each of its directors and officers; and the name and~~
22 ~~address of each person having at least a 5 percent ownership~~
23 ~~interest in the corporation.~~

24 ~~(b) The name and address of any professional service,~~
25 ~~firm, association, partnership, or corporation that is to~~
26 ~~provide goods, leases, or services to the facility if a~~
27 ~~5 percent or greater ownership interest in the service, firm,~~
28 ~~association, partnership, or corporation is owned by a person~~
29 ~~whose name must be listed on the application under paragraph~~
30 ~~(a).~~

31

1 ~~(c) The name and address of any long term care~~
2 ~~facility with which the applicant, administrator, or financial~~
3 ~~officer has been affiliated through ownership or employment~~
4 ~~within 5 years of the date of this license application; and a~~
5 ~~signed affidavit disclosing any financial or ownership~~
6 ~~interest that the applicant, or any person listed in paragraph~~
7 ~~(a), holds or has held within the last 5 years in any facility~~
8 ~~licensed under this part, or in any other entity licensed by~~
9 ~~this state or another state to provide health or residential~~
10 ~~care, which facility or entity closed or ceased to operate as~~
11 ~~a result of financial problems, or has had a receiver~~
12 ~~appointed or a license denied, suspended or revoked, or was~~
13 ~~subject to a moratorium on admissions, or has had an~~
14 ~~injunctive proceeding initiated against it.~~

15 ~~(d) 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 ~~disclosure of ownership and control interest requirements of~~
19 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
20 ~~this submission.~~

21 ~~(e) The names and addresses of persons of whom the~~
22 ~~agency may inquire as to the character, reputation, and~~
23 ~~financial responsibility of the owner and, if different from~~
24 ~~the applicant, the administrator and financial officer.~~

25 ~~(a)(f)~~ Identify ~~Identification~~ of all other homes or
26 facilities, including the addresses and the license or
27 licenses under which they operate, if applicable, which are
28 currently operated by the applicant or administrator and which
29 provide housing, meals, and personal services to residents.

30 ~~(b)(g)~~ Provide the location of the facility for which
31 a license is sought and documentation, signed by the

1 appropriate local government official, which states that the
2 applicant has met local zoning requirements.

3 ~~(c)(h)~~ Provide the name, address, date of birth,
4 social security number, education, and experience of the
5 administrator, if different from the applicant.

6 ~~(4) The applicant shall furnish satisfactory proof of~~
7 ~~financial ability to operate and conduct the facility in~~
8 ~~accordance with the requirements of this part. A certificate~~
9 ~~of authority, pursuant to chapter 651, may be provided as~~
10 ~~proof of financial ability.~~

11 ~~(5) If the applicant is a continuing care facility~~
12 ~~certified under chapter 651, a copy of the facility's~~
13 ~~certificate of authority must be provided.~~

14 ~~(2)(6)~~ The applicant shall provide proof of liability
15 insurance as defined in s. 624.605.

16 ~~(7) If the applicant is a community residential home,~~
17 ~~the applicant must provide proof that it has met the~~
18 ~~requirements specified in chapter 419.~~

19 ~~(8) The applicant must provide the agency with proof~~
20 ~~of legal right to occupy the property.~~

21 ~~(3)(9) The applicant must furnish proof that the~~
22 ~~facility has received a satisfactory firesafety inspection.~~

23 The local authority having jurisdiction or the State Fire
24 Marshal must conduct the inspection within 30 days after
25 written request by the applicant.

26 ~~(4)(10)~~ The applicant must furnish documentation of a
27 satisfactory sanitation inspection of the facility by the
28 county health department.

29 ~~(11) The applicant must furnish proof of compliance~~
30 ~~with level 2 background screening as required under s.~~
31 ~~400.4174.~~

1 ~~(5)(12)~~ A provisional license may be issued to an
2 applicant making initial application for licensure or making
3 application for a change of ownership. A provisional license
4 shall be limited in duration to a specific period of time not
5 to exceed 6 months, as determined by the agency.

6 ~~(6)(13)~~ A county or municipality may not issue an
7 occupational license that is being obtained for the purpose of
8 operating a facility regulated under this part without first
9 ascertaining that the applicant has been licensed to operate
10 such facility at the specified location or locations by the
11 agency. The agency shall furnish to local agencies
12 responsible for issuing occupational licenses sufficient
13 instruction for making such determinations.

14 Section 81. Section 400.412, Florida Statutes, is
15 amended to read:

16 400.412 Sale or transfer of ownership of a
17 facility.--It is the intent of the Legislature to protect the
18 rights of the residents of an assisted living facility when
19 the facility is sold or the ownership thereof is transferred.
20 Therefore, in addition to the requirements of part II of
21 chapter 408, whenever a facility is sold or the ownership
22 thereof is transferred, including leasing:

23 ~~(1) The transferee shall make application to the~~
24 ~~agency for a new license at least 60 days before the date of~~
25 ~~transfer of ownership. The application must comply with the~~
26 ~~provisions of s. 400.411.~~

27 ~~(2)(a) The transferor shall notify the agency in~~
28 ~~writing at least 60 days before the date of transfer of~~
29 ~~ownership.~~

1 ~~(1)(b)~~ The transferee ~~new owner~~ shall notify the
2 residents, in writing, of the change ~~transfer~~ of ownership
3 within 7 days after ~~of his or her~~ receipt of the new license.

4 ~~(3)~~ ~~The transferor shall be responsible and liable~~
5 ~~for:~~

6 ~~(a)~~ ~~The lawful operation of the facility and the~~
7 ~~welfare of the residents domiciled in the facility until the~~
8 ~~date the transferee is licensed by the agency.~~

9 ~~(b)~~ ~~Any and all penalties imposed against the facility~~
10 ~~for violations occurring before the date of transfer of~~
11 ~~ownership unless the penalty imposed is a moratorium on~~
12 ~~admissions or denial of licensure. The moratorium on~~
13 ~~admissions or denial of licensure remains in effect after the~~
14 ~~transfer of ownership, unless the agency has approved the~~
15 ~~transferee's corrective action plan or the conditions which~~
16 ~~created the moratorium or denial have been corrected, and may~~
17 ~~be grounds for denial of license to the transferee in~~
18 ~~accordance with chapter 120.~~

19 ~~(c)~~ ~~Any outstanding liability to the state, unless the~~
20 ~~transferee has agreed, as a condition of sale or transfer, to~~
21 ~~accept the outstanding liabilities and to guarantee payment~~
22 ~~therefor; except that, if the transferee fails to meet these~~
23 ~~obligations, the transferor shall remain liable for the~~
24 ~~outstanding liability.~~

25 ~~(2)(4)~~ The transferor of a facility the license of
26 which is denied pending an administrative hearing shall, as a
27 part of the written change-of-ownership ~~transfer of ownership~~
28 contract, advise the transferee that a plan of correction must
29 be submitted by the transferee and approved by the agency at
30 least 7 days before the change ~~transfer~~ of ownership and that
31 failure to correct the condition which resulted in the

1 moratorium pursuant to s. 408.814 ~~on admissions~~ or denial of
2 licensure is grounds for denial of the transferee's license.

3 ~~(5) The transferee must provide the agency with proof~~
4 ~~of legal right to occupy the property before a license may be~~
5 ~~issued. Proof may include, but is not limited to, copies of~~
6 ~~warranty deeds, or copies of lease or rental agreements,~~
7 ~~contracts for deeds, quitclaim deeds, or other such~~
8 ~~documentation.~~

9 Section 82. Section 400.414, Florida Statutes, is
10 amended to read:

11 400.414 Denial or, ~~revocation, or suspension~~ of
12 license; moratorium; imposition of administrative fine;
13 grounds.--

14 (1) The agency may deny or, ~~revoke, or suspend~~ any
15 license issued under this part, impose a moratorium, or impose
16 an administrative fine in the manner provided in chapter 120,
17 for any of the following actions by an assisted living
18 facility, for the actions of any person subject to level 2
19 background screening under s. 400.4174, or for the actions of
20 any facility employee in violation of any provision of this
21 part, part II of chapter 408, or applicable rule:

22 (a) An intentional or negligent act seriously
23 affecting the health, safety, or welfare of a resident of the
24 facility.

25 (b) The determination by the agency that the owner
26 lacks the financial ability to provide continuing adequate
27 care to residents.

28 (c) Misappropriation or conversion of the property of
29 a resident of the facility.

30 (d) Failure to follow the criteria and procedures
31 provided under part I of chapter 394 relating to the

1 transportation, voluntary admission, and involuntary
2 examination of a facility resident.

3 (e) A citation of any of the following deficiencies as
4 defined in s. 400.419:

- 5 1. One or more cited class I deficiencies.
- 6 2. Three or more cited class II deficiencies.
- 7 3. Five or more cited class III deficiencies that have
8 been cited on a single survey and have not been corrected
9 within the times specified.

10 (f) A determination that a person subject to level 2
11 background screening under s. 400.4174(1) does not meet the
12 screening standards of s. 435.04 or that the facility is
13 retaining an employee subject to level 1 background screening
14 standards under s. 400.4174(2) who does not meet the screening
15 standards of s. 435.03 and for whom exemptions from
16 disqualification have not been provided by the agency.

17 (g) A determination that an employee, volunteer,
18 administrator, or owner, or person who otherwise has access to
19 the residents of a facility does not meet the criteria
20 specified in s. 435.03(2), and the owner or administrator has
21 not taken action to remove the person. Exemptions from
22 disqualification may be granted as set forth in s. 435.07. No
23 administrative action may be taken against the facility if the
24 person is granted an exemption.

25 ~~(h) Violation of a moratorium.~~

26 ~~(i) Failure of the license applicant, the licensee~~
27 ~~during relicensure, or a licensee that holds a provisional~~
28 ~~license to meet the minimum license requirements of this part,~~
29 ~~or related rules, at the time of license application or~~
30 ~~renewal.~~

31

1 ~~(j) A fraudulent statement or omission of any material~~
2 ~~fact on an application for a license or any other document~~
3 ~~required by the agency, including the submission of a license~~
4 ~~application that conceals the fact that any board member,~~
5 ~~officer, or person owning 5 percent or more of the facility~~
6 ~~may not meet the background screening requirements of s.~~
7 ~~400.4174, or that the applicant has been excluded, permanently~~
8 ~~suspended, or terminated from the Medicaid or Medicare~~
9 ~~programs.~~

10 (h)(k) An intentional or negligent life-threatening
11 act in violation of the uniform firesafety standards for
12 assisted living facilities or other firesafety standards that
13 threatens the health, safety, or welfare of a resident of a
14 facility, as communicated to the agency by the local authority
15 having jurisdiction or the State Fire Marshal.

16 ~~(l) Exclusion, permanent suspension, or termination~~
17 ~~from the Medicare or Medicaid programs.~~

18 (i)(m) Knowingly operating any unlicensed facility or
19 providing without a license any service that must be licensed
20 under this chapter.

21 (j)(n) Any act constituting a ground upon which
22 application for a license may be denied.

23
24 ~~Administrative proceedings challenging agency action under~~
25 ~~this subsection shall be reviewed on the basis of the facts~~
26 ~~and conditions that resulted in the agency action.~~

27 (2) Upon notification by the local authority having
28 jurisdiction or by the State Fire Marshal, the agency may deny
29 or revoke the license of an assisted living facility that
30 fails to correct cited fire code violations that affect or
31

1 threaten the health, safety, or welfare of a resident of a
2 facility.

3 (3) The agency may deny a license to any applicant
4 controlling interest as defined in s. 408.803 that ~~or to any~~
5 ~~officer or board member of an applicant who is a firm,~~
6 ~~corporation, partnership, or association or who owns 5 percent~~
7 ~~or more of the facility, if the applicant, officer, or board~~
8 ~~member~~ has or had a 25-percent or greater financial or
9 ownership interest in any other facility licensed under this
10 part, or in any entity licensed by this state or another state
11 to provide health or residential care, which facility or
12 entity during the 5 years prior to the application for a
13 license closed due to financial inability to operate; had a
14 receiver appointed or a license denied, suspended, or revoked;
15 was subject to a moratorium pursuant to s. 408.814 ~~on~~
16 ~~admissions~~; had an injunctive proceeding initiated against it;
17 or has an outstanding fine assessed under this chapter.

18 (4) The agency shall deny or revoke the license of an
19 assisted living facility that has two or more class I
20 violations that are similar or identical to violations
21 identified by the agency during a survey, inspection,
22 monitoring visit, or complaint investigation occurring within
23 the previous 2 years.

24 (5) An action taken by the agency to suspend, deny, or
25 revoke a facility's license under this part, in which the
26 agency claims that the facility owner or an employee of the
27 facility has threatened the health, safety, or welfare of a
28 resident of the facility be heard by the Division of
29 Administrative Hearings of the Department of Management
30 Services within 120 days after receipt of the facility's
31 request for a hearing, unless that time limitation is waived

1 by both parties. The administrative law judge must render a
2 decision within 30 days after receipt of a proposed
3 recommended order.

4 (6) The agency shall provide to the Division of Hotels
5 and Restaurants of the Department of Business and Professional
6 Regulation, on a monthly basis, a list of those assisted
7 living facilities that have had their licenses denied,
8 ~~suspended,~~ or revoked or that are involved in an appellate
9 proceeding pursuant to s. 120.60 related to the denial,
10 ~~suspension,~~ or revocation of a license.

11 (7) Agency notification of a license ~~suspension or~~
12 revocation, or denial of a license renewal, shall be posted
13 and visible to the public at the facility.

14 ~~(8) The agency may issue a temporary license pending~~
15 ~~final disposition of a proceeding involving the suspension or~~
16 ~~revocation of an assisted living facility license.~~

17 Section 83. Section 400.417, Florida Statutes, is
18 amended to read:

19 400.417 Expiration of license; renewal; conditional
20 license.--

21 ~~(1) Biennial licenses, unless sooner suspended or~~
22 ~~revoked, shall expire 2 years from the date of issuance.~~
23 Limited nursing, extended congregate care, and limited mental
24 health licenses shall expire at the same time as the
25 facility's standard license, regardless of when issued. ~~The~~
26 ~~agency shall notify the facility at least 120 days prior to~~
27 ~~expiration that a renewal license is necessary to continue~~
28 ~~operation. The notification must be provided electronically or~~
29 ~~by mail delivery. Ninety days prior to the expiration date, an~~
30 ~~application for renewal shall be submitted to the agency. Fees~~
31 ~~must be prorated. The failure to file a timely renewal~~

1 ~~application shall result in a late fee charged to the facility~~
2 ~~in an amount equal to 50 percent of the current fee.~~

3 (2) A license shall be renewed in accordance with part
4 II of chapter 408 ~~within 90 days upon the timely filing of an~~
5 ~~application on forms furnished by the agency~~ and the provision
6 of satisfactory proof of ability to operate and conduct the
7 facility in accordance with the requirements of this part and
8 adopted rules, including proof that the facility has received
9 a satisfactory firesafety inspection, conducted by the local
10 authority having jurisdiction or the State Fire Marshal,
11 within the preceding 12 months ~~and an affidavit of compliance~~
12 ~~with the background screening requirements of s. 400.4174.~~

13 (3) In addition to the requirements of part II of
14 chapter 408, ~~An applicant for renewal of a license who has~~
15 ~~complied with the provisions of s. 400.411 with respect to~~
16 ~~proof of financial ability to operate shall not be required to~~
17 ~~provide further proof unless the facility or any other~~
18 ~~facility owned or operated in whole or in part by the same~~
19 ~~person has demonstrated financial instability as provided~~
20 ~~under s. 400.447(2) or unless the agency suspects that the~~
21 ~~facility is not financially stable as a result of the annual~~
22 ~~survey or complaints from the public or a report from the~~
23 ~~State Long Term Care Ombudsman Council.~~ each facility must
24 report to the agency any adverse court action concerning the
25 facility's financial viability, within 7 days after its
26 occurrence. The agency shall have access to books, records,
27 and any other financial documents maintained by the facility
28 to the extent necessary to determine the facility's financial
29 stability. ~~A license for the operation of a facility shall not~~
30 ~~be renewed if the licensee has any outstanding fines assessed~~
31 ~~pursuant to this part which are in final order status.~~

1 ~~(4)~~ A licensee against whom a revocation or suspension
2 ~~proceeding is pending at the time of license renewal may be~~
3 ~~issued a conditional license effective until final disposition~~
4 ~~by the agency. If judicial relief is sought from the final~~
5 ~~disposition, the court having jurisdiction may issue a~~
6 ~~conditional license for the duration of the judicial~~
7 ~~proceeding.~~

8 ~~(4)~~~~(5)~~ A conditional license may be issued to an
9 applicant for license renewal if the applicant fails to meet
10 all standards and requirements for licensure. A conditional
11 license issued under this subsection shall be limited in
12 duration to a specific period of time not to exceed 6 months,
13 as determined by the agency, and shall be accompanied by an
14 agency-approved plan of correction.

15 ~~(5)~~~~(6)~~ When an extended care or limited nursing
16 license is requested during a facility's biennial license
17 period, the fee shall be prorated in order to permit the
18 additional license to expire at the end of the biennial
19 license period. The fee shall be calculated as of the date the
20 additional license application is received by the agency.

21 ~~(6)~~~~(7)~~ The agency ~~department~~ may by rule establish
22 renewal procedures, identify forms, and specify documentation
23 necessary to administer this section and part II of chapter
24 408.

25 Section 84. Section 400.415, Florida Statutes, is
26 repealed.

27 Section 85. Section 400.4174, Florida Statutes, is
28 amended to read:

29 400.4174 Background screening; exemptions.--

30 ~~(1)(a)~~ ~~Level 2 background screening must be conducted~~
31 ~~on each of the following persons, who shall be considered~~

1 ~~employees for the purposes of conducting screening under~~
2 ~~chapter 435:~~

3 ~~1. The facility owner if an individual, the~~
4 ~~administrator, and the financial officer.~~

5 ~~2. An officer or board member if the facility owner is~~
6 ~~a firm, corporation, partnership, or association, or any~~
7 ~~person owning 5 percent or more of the facility if the agency~~
8 ~~has probable cause to believe that such person has been~~
9 ~~convicted of any offense prohibited by s. 435.04. For each~~
10 ~~officer, board member, or person owning 5 percent or more who~~
11 ~~has been convicted of any such offense, the facility shall~~
12 ~~submit to the agency a description and explanation of the~~
13 ~~conviction at the time of license application. This~~
14 ~~subparagraph does not apply to a board member of a~~
15 ~~not for profit corporation or organization if the board member~~
16 ~~serves solely in a voluntary capacity, does not regularly take~~
17 ~~part in the day to day operational decisions of the~~
18 ~~corporation or organization, receives no remuneration for his~~
19 ~~or her services, and has no financial interest and has no~~
20 ~~family members with a financial interest in the corporation or~~
21 ~~organization, provided that the board member and facility~~
22 ~~submit a statement affirming that the board member's~~
23 ~~relationship to the facility satisfies the requirements of~~
24 ~~this subparagraph.~~

25 ~~(b) Proof of compliance with level 2 screening~~
26 ~~standards which has been submitted within the previous 5 years~~
27 ~~to meet any facility or professional licensure requirements of~~
28 ~~the agency or the Department of Health satisfies the~~
29 ~~requirements of this subsection, provided that such proof is~~
30 ~~accompanied, under penalty of perjury, by an affidavit of~~
31 ~~compliance with the provisions of chapter 435. Proof of~~

1 ~~compliance with the background screening requirements of the~~
2 ~~Financial Services Commission and the Office of Insurance~~
3 ~~Regulation for applicants for a certificate of authority to~~
4 ~~operate a continuing care retirement community under chapter~~
5 ~~651, submitted within the last 5 years, satisfies the~~
6 ~~Department of Law Enforcement and Federal Bureau of~~
7 ~~Investigation portions of a level 2 background check.~~

8 ~~(c) The agency may grant a provisional license to a~~
9 ~~facility applying for an initial license when each individual~~
10 ~~required by this subsection to undergo screening has completed~~
11 ~~the Department of Law Enforcement background checks, but has~~
12 ~~not yet received results from the Federal Bureau of~~
13 ~~Investigation, or when a request for an exemption from~~
14 ~~disqualification has been submitted to the agency pursuant to~~
15 ~~s. 435.07, but a response has not been issued.~~

16 ~~(2)~~ The owner or administrator of an assisted living
17 facility must conduct level 1 background screening, as set
18 forth in chapter 435, on all employees hired on or after
19 October 1, 1998, who perform personal services as defined in
20 s. 400.402(17). The agency may exempt an individual from
21 employment disqualification as set forth in chapter 435. Such
22 persons shall be considered as having met this requirement if:

23 (1)(a) Proof of compliance with level 1 screening
24 requirements obtained to meet any professional license
25 requirements in this state is provided and accompanied, under
26 penalty of perjury, by a copy of the person's current
27 professional license and an affidavit of current compliance
28 with the background screening requirements.

29 (2)(b) The person required to be screened has been
30 continuously employed in the same type of occupation for which
31 the person is seeking employment without a breach in service

1 which exceeds 180 days, and proof of compliance with the level
2 1 screening requirement which is no more than 2 years old is
3 provided. Proof of compliance shall be provided directly from
4 one employer or contractor to another, and not from the person
5 screened. Upon request, a copy of screening results shall be
6 provided by the employer retaining documentation of the
7 screening to the person screened.

8 ~~(3)(c)~~ The person required to be screened is employed
9 by a corporation or business entity or related corporation or
10 business entity that owns, operates, or manages more than one
11 facility or agency licensed under this chapter, and for whom a
12 level 1 screening was conducted by the corporation or business
13 entity as a condition of initial or continued employment.

14 Section 86. Section 400.4176, Florida Statutes, is
15 amended to read:

16 400.4176 Notice of change of administrator.--If,
17 during the period for which a license is issued, the owner
18 changes administrators, the owner must notify the agency of
19 the change within 10 days and provide documentation within 90
20 days that the new administrator has completed the applicable
21 core educational requirements under s. 400.452. ~~Background~~
22 ~~screening shall be completed on any new administrator as~~
23 ~~specified in s. 400.4174.~~

24 Section 87. Subsection (7) of section 400.4178,
25 Florida Statutes, is repealed.

26 Section 88. Section 400.418, Florida Statutes, is
27 amended to read:

28 400.418 Disposition of fees and administrative
29 fines.--

30 ~~(1)~~ Income from ~~license fees, inspection fees, late~~
31 ~~fees,~~ and ~~administrative~~ fees collected under this part

1 ~~generated pursuant to ss. 400.407, 400.408, 400.417, 400.419,~~
2 ~~and 400.431 shall be deposited in the Health Care Trust Fund~~
3 ~~administered by the agency. Such funds~~ shall be directed to
4 and used by the agency for the following purposes:

5 (1)(a) Up to 50 percent of the trust funds accrued
6 each fiscal year under this part may be used to offset the
7 expenses of receivership, pursuant to s. 400.422, if the court
8 determines that the income and assets of the facility are
9 insufficient to provide for adequate management and operation.

10 (2)(b) An amount of \$5,000 of the trust funds accrued
11 each year under this part shall be allocated to pay for
12 inspection-related physical and mental health examinations
13 requested by the agency pursuant to s. 400.426 for residents
14 who are either recipients of supplemental security income or
15 have monthly incomes not in excess of the maximum combined
16 federal and state cash subsidies available to supplemental
17 security income recipients, as provided for in s. 409.212.
18 Such funds shall only be used where the resident is ineligible
19 for Medicaid.

20 (3)(c) Any trust funds accrued each year under this
21 part and not used for the purposes specified in paragraphs (a)
22 and (b) shall be used to offset the costs of the licensure
23 program, ~~including the costs of conducting background~~
24 ~~investigations,~~ verifying information submitted, defraying the
25 costs of processing the names of applicants, and conducting
26 inspections and monitoring visits pursuant to this part and
27 part II of chapter 408.

28 ~~(2) Income from fees generated pursuant to s.~~
29 ~~400.441(5) shall be deposited in the Health Care Trust Fund~~
30 ~~and used to offset the costs of printing and postage.~~

31

1 Section 89. Section 400.419, Florida Statutes, is
2 amended to read:

3 400.419 Violations; imposition of administrative
4 fines; grounds.--

5 (1) The agency shall impose an administrative fine in
6 the manner provided in chapter 120 for a violation of any
7 provision of this part, part II of chapter 408, or applicable
8 rule ~~any of the actions or violations as set forth within this~~
9 ~~section~~ by an assisted living facility, for the actions of any
10 person subject to level 2 background screening under s.
11 400.4174, for the actions of any facility employee, or for an
12 intentional or negligent act seriously affecting the health,
13 safety, or welfare of a resident of the facility.

14 (2) Each violation of this part and adopted rules
15 shall be classified according to the nature of the violation
16 and the gravity of its probable effect on facility residents.
17 The agency shall indicate the classification on the written
18 notice of the violation as follows:

19 (a) Class "I" violations are those conditions or
20 occurrences related to the operation and maintenance of a
21 facility or to the personal care of residents which the agency
22 determines present an imminent danger to the residents or
23 guests of the facility or a substantial probability that death
24 or serious physical or emotional harm would result therefrom.
25 The condition or practice constituting a class I violation
26 shall be abated or eliminated within 24 hours, unless a fixed
27 period, as determined by the agency, is required for
28 correction. The agency shall impose an administrative fine for
29 a cited class I violation in an amount not less than \$5,000
30 and not exceeding \$10,000 for each violation. A fine may be
31 levied notwithstanding the correction of the violation.

1 (b) Class "II" violations are those conditions or
2 occurrences related to the operation and maintenance of a
3 facility or to the personal care of residents which the agency
4 determines directly threaten the physical or emotional health,
5 safety, or security of the facility residents, other than
6 class I violations. The agency shall impose an administrative
7 fine for a cited class II violation in an amount not less than
8 \$1,000 and not exceeding \$5,000 for each violation. A fine
9 shall be levied notwithstanding the correction of the
10 violation.

11 (c) Class "III" violations are those conditions or
12 occurrences related to the operation and maintenance of a
13 facility or to the personal care of residents which the agency
14 determines indirectly or potentially threaten the physical or
15 emotional health, safety, or security of facility residents,
16 other than class I or class II violations. The agency shall
17 impose an administrative fine for a cited class III violation
18 in an amount not less than \$500 and not exceeding \$1,000 for
19 each violation. A citation for a class III violation must
20 specify the time within which the violation is required to be
21 corrected. If a class III violation is corrected within the
22 time specified, no fine may be imposed, unless it is a
23 repeated offense.

24 (d) Class "IV" violations are those conditions or
25 occurrences related to the operation and maintenance of a
26 building or to required reports, forms, or documents that do
27 not have the potential of negatively affecting residents.
28 These violations are of a type that the agency determines do
29 not threaten the health, safety, or security of residents of
30 the facility. The agency shall impose an administrative fine
31 for a cited class IV violation in an amount not less than \$100

1 and not exceeding \$200 for each violation. A citation for a
2 class IV violation must specify the time within which the
3 violation is required to be corrected. If a class IV violation
4 is corrected within the time specified, no fine shall be
5 imposed. Any class IV violation that is corrected during the
6 time an agency survey is being conducted will be identified as
7 an agency finding and not as a violation.

8 (3) In determining if a penalty is to be imposed and
9 in fixing the amount of the fine, the agency shall consider
10 the following factors:

11 (a) The gravity of the violation, including the
12 probability that death or serious physical or emotional harm
13 to a resident will result or has resulted, the severity of the
14 action or potential harm, and the extent to which the
15 provisions of the applicable laws or rules were violated.

16 (b) Actions taken by the owner or administrator to
17 correct violations.

18 (c) Any previous violations.

19 (d) The financial benefit to the facility of
20 committing or continuing the violation.

21 (e) The licensed capacity of the facility.

22 (4) Each day of continuing violation after the date
23 fixed for termination of the violation, as ordered by the
24 agency, constitutes an additional, separate, and distinct
25 violation.

26 (5) Any action taken to correct a violation shall be
27 documented in writing by the owner or administrator of the
28 facility and verified through followup visits by agency
29 personnel. The agency may impose a fine and, in the case of an
30 owner-operated facility, revoke or deny a facility's license
31

1 when a facility administrator fraudulently misrepresents
2 action taken to correct a violation.

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

7 ~~(7) Any unlicensed facility that continues to operate~~
8 ~~after agency notification is subject to a \$1,000 fine per day.~~

9 ~~(8) Any licensed facility whose owner or administrator~~
10 ~~concurrently operates an unlicensed facility shall be subject~~
11 ~~to an administrative fine of \$5,000 per day.~~

12 ~~(9) Any facility whose owner fails to apply for a~~
13 ~~change of ownership license in accordance with s. 400.412 and~~
14 ~~operates the facility under the new ownership is subject to a~~
15 ~~fine of \$5,000.~~

16 (6)(10) In addition to any administrative fines
17 imposed, the agency may assess a survey fee, equal to the
18 lesser of one half of the facility's biennial license and bed
19 fee or \$500, to cover the cost of conducting initial complaint
20 investigations that result in the finding of a violation that
21 was the subject of the complaint or monitoring visits
22 conducted under s. 400.428(3)(c) to verify the correction of
23 the violations.

24 (7)(11) The agency, as an alternative to or in
25 conjunction with an administrative action against a facility
26 for violations of this part and adopted rules, shall make a
27 reasonable attempt to discuss each violation and recommended
28 corrective action with the owner or administrator of the
29 facility, prior to written notification. The agency, instead
30 of fixing a period within which the facility shall enter into
31 compliance with standards, may request a plan of corrective

1 action from the facility which demonstrates a good faith
2 effort to remedy each violation by a specific date, subject to
3 the approval of the agency.

4 ~~(12) Administrative fines paid by any facility under~~
5 ~~this section shall be deposited into the Health Care Trust~~
6 ~~Fund and expended as provided in s. 400.418.~~

7 (8)~~(13)~~ The agency shall develop and disseminate an
8 annual list of all facilities sanctioned or fined \$5,000 or
9 more for violations of state standards, the number and class
10 of violations involved, the penalties imposed, and the current
11 status of cases. The list shall be disseminated, at no charge,
12 to the Department of Elderly Affairs, the Department of
13 Health, the Department of Children and Family Services, the
14 area agencies on aging, the Florida Statewide Advocacy
15 Council, and the state and local ombudsman councils. The
16 Department of Children and Family Services shall disseminate
17 the list to service providers under contract to the department
18 who are responsible for referring persons to a facility for
19 residency. The agency may charge a fee commensurate with the
20 cost of printing and postage to other interested parties
21 requesting a copy of this list.

22 Section 90. Subsections (2) and (3) of section 400.42,
23 Florida Statutes, are amended to read:

24 400.42 Certain solicitation prohibited; third-party
25 supplementation.--

26 (2) Solicitation of contributions of any kind in a
27 threatening, coercive, or unduly forceful manner by or on
28 behalf of an assisted living facility or facilities by any
29 agent, employee, owner, or representative of any assisted
30 living facility or facilities is grounds for denial,
31 ~~suspension,~~ or revocation of the license of the assisted

1 living facility or facilities by or on behalf of which such
2 contributions were solicited.

3 (3) The admission or maintenance of assisted living
4 facility residents whose care is supported, in whole or in
5 part, by state funds may not be conditioned upon the receipt
6 of any manner of contribution or donation from any person. The
7 solicitation or receipt of contributions in violation of this
8 subsection is grounds for denial, ~~suspension~~, or revocation of
9 license, as provided in s. 400.414, for any assisted living
10 facility by or on behalf of which such contributions were
11 solicited.

12 Section 91. Section 400.421, Florida Statutes, is
13 repealed.

14 Section 92. Subsection (10) of section 400.423,
15 Florida Statutes, is amended to read:

16 400.423 Internal risk management and quality assurance
17 program; adverse incidents and reporting requirements.--

18 (10) The agency ~~Department of Elderly Affairs~~ may
19 adopt rules necessary to administer this section.

20 Section 93. Subsection (8) of section 400.424, Florida
21 Statutes, is amended to read:

22 400.424 Contracts.--

23 (8) The agency ~~department~~ may by rule clarify terms,
24 establish procedures, clarify refund policies and contract
25 provisions, and specify documentation as necessary to
26 administer this section.

27 Section 94. Subsection (3) of section 400.4255,
28 Florida Statutes, is amended to read:

29 400.4255 Use of personnel; emergency care.--

30 (3) Facility staff may withhold or withdraw
31 cardiopulmonary resuscitation if presented with an order not

1 to resuscitate executed pursuant to s. 401.45. The agency
2 ~~department~~ shall adopt rules providing for the implementation
3 of such orders. Facility staff and facilities shall not be
4 subject to criminal prosecution or civil liability, nor be
5 considered to have engaged in negligent or unprofessional
6 conduct, for withholding or withdrawing cardiopulmonary
7 resuscitation pursuant to such an order and applicable rules
8 ~~adopted by the department~~. The absence of an order to
9 resuscitate executed pursuant to s. 401.45 does not preclude a
10 physician from withholding or withdrawing cardiopulmonary
11 resuscitation as otherwise permitted by law.

12 Section 95. Subsection (6) of section 400.4256,
13 Florida Statutes, is amended to read:

14 400.4256 Assistance with self-administration of
15 medication.--

16 (6) The agency ~~department~~ may by rule establish
17 facility procedures and interpret terms as necessary to
18 implement this section.

19 Section 96. Subsection (8) of section 400.427, Florida
20 Statutes, is amended to read:

21 400.427 Property and personal affairs of residents.--

22 (8) The agency ~~department~~ may by rule clarify terms
23 and specify procedures and documentation necessary to
24 administer the provisions of this section relating to the
25 proper management of residents' funds and personal property
26 and the execution of surety bonds.

27 Section 97. Subsection (4) of section 400.4275,
28 Florida Statutes, is amended to read:

29 400.4275 Business practice; personnel records;
30 liability insurance.--The assisted living facility shall be
31

1 administered on a sound financial basis that is consistent
2 with good business practices.

3 (4) The agency ~~department~~ may by rule clarify terms,
4 establish requirements for financial records, accounting
5 procedures, personnel procedures, insurance coverage, and
6 reporting procedures, and specify documentation as necessary
7 to implement the requirements of this section.

8 Section 98. Subsections (1) and (5) of section
9 400.431, Florida Statutes, are amended to read:

10 400.431 Closing of facility; notice; penalty.--

11 (1) ~~Whenever a facility voluntarily discontinues~~
12 ~~operation, it shall inform the agency in writing at least 90~~
13 ~~days prior to the discontinuance of operation.~~ The facility
14 shall also inform each resident or the next of kin, legal
15 representative, or agency acting on each resident's behalf, of
16 the fact and the proposed time of such discontinuance,
17 following the notification requirements provided in s.
18 400.428(1)(k). In the event a resident has no person to
19 represent him or her, the facility shall be responsible for
20 referral to an appropriate social service agency for
21 placement.

22 (5) The agency may levy a fine in an amount no greater
23 than \$5,000 upon each person or business entity that owns any
24 interest in a facility that terminates operation without
25 providing notice to the agency and the residents of the
26 facility at least 30 days before operation ceases. This fine
27 shall not be levied against any facility involuntarily closed
28 at the initiation of the agency. The agency shall use the
29 proceeds of the fines to operate the facility until all
30 residents of the facility are relocated ~~and shall deposit any~~
31

1 ~~balance of the proceeds into the Health Care Trust Fund~~
2 ~~established pursuant to s. 400.418.~~

3 Section 99. Section 400.434, Florida Statutes, is
4 amended to read:

5 400.434 Right of entry and inspection.--Any duly
6 designated officer or employee of the department, the
7 Department of Children and Family Services, ~~the agency,~~ the
8 state or local fire marshal, ~~or~~ a member of the state or local
9 long-term care ombudsman council, or the agency in accordance
10 with s. 408.811 shall have the right to enter unannounced upon
11 and into the premises of any facility licensed pursuant to
12 this part in order to determine the state of compliance with
13 the provisions of this part, part II of chapter 408, and
14 applicable ~~of rules or standards in force pursuant thereto.~~
15 ~~The right of entry and inspection shall also extend to any~~
16 ~~premises which the agency has reason to believe is being~~
17 ~~operated or maintained as a facility without a license; but no~~
18 ~~such entry or inspection of any premises may be made without~~
19 ~~the permission of the owner or person in charge thereof,~~
20 ~~unless a warrant is first obtained from the circuit court~~
21 ~~authorizing such entry. The warrant requirement shall extend~~
22 ~~only to a facility which the agency has reason to believe is~~
23 ~~being operated or maintained as a facility without a license.~~
24 ~~Any application for a license or renewal thereof made pursuant~~
25 ~~to this part shall constitute permission for, and complete~~
26 ~~acquiescence in, any entry or inspection of the premises for~~
27 ~~which the license is sought, in order to facilitate~~
28 ~~verification of the information submitted on or in connection~~
29 ~~with the application; to discover, investigate, and determine~~
30 ~~the existence of abuse or neglect; or to elicit, receive,~~
31 ~~respond to, and resolve complaints. Any current valid license~~

1 ~~shall constitute unconditional permission for, and complete~~
2 ~~acquiescence in, any entry or inspection of the premises by~~
3 ~~authorized personnel.~~ The agency shall retain the right of
4 entry and inspection of facilities that have had a license
5 revoked or suspended within the previous 24 months, to ensure
6 that the facility is not operating unlawfully. However, before
7 entering the facility, a statement of probable cause must be
8 filed with the director of the agency, who must approve or
9 disapprove the action within 48 hours. Probable cause shall
10 include, but is not limited to, evidence that the facility
11 holds itself out to the public as a provider of personal care
12 services or the receipt of a complaint by the long-term care
13 ombudsman council about the facility. Data collected by the
14 state or local long-term care ombudsman councils or the state
15 or local advocacy councils may be used by the agency in
16 investigations involving violations of regulatory standards.

17 Section 100. Subsection (1) of section 400.435,
18 Florida Statutes, is repealed.

19 Section 101. Section 400.441, Florida Statutes, is
20 amended to read:

21 400.441 Rules establishing standards.--

22 (1) It is the intent of the Legislature that rules
23 published and enforced pursuant to this section shall include
24 criteria by which a reasonable and consistent quality of
25 resident care and quality of life may be ensured and the
26 results of such resident care may be demonstrated. Such rules
27 shall also ensure a safe and sanitary environment that is
28 residential and noninstitutional in design or nature. It is
29 further intended that reasonable efforts be made to
30 accommodate the needs and preferences of residents to enhance
31 the quality of life in a facility. In order to provide safe

1 and sanitary facilities and the highest quality of resident
2 care accommodating the needs and preferences of residents, the
3 ~~agency department~~, in consultation with the department agency,
4 the Department of Children and Family Services, and the
5 Department of Health, shall adopt rules, policies, and
6 procedures to administer this part and part II of chapter 408,
7 which must include reasonable and fair minimum standards in
8 relation to:

9 (a) The requirements for and maintenance of
10 facilities, not in conflict with the provisions of chapter
11 553, relating to plumbing, heating, cooling, lighting,
12 ventilation, living space, and other housing conditions, which
13 will ensure the health, safety, and comfort of residents and
14 protection from fire hazard, including adequate provisions for
15 fire alarm and other fire protection suitable to the size of
16 the structure. Uniform firesafety standards shall be
17 established and enforced by the State Fire Marshal in
18 cooperation with the agency, the department, and the
19 Department of Health.

20 1. Evacuation capability determination.--

21 a. The provisions of the National Fire Protection
22 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
23 for determining the ability of the residents, with or without
24 staff assistance, to relocate from or within a licensed
25 facility to a point of safety as provided in the fire codes
26 adopted herein. An evacuation capability evaluation for
27 initial licensure shall be conducted within 6 months after the
28 date of licensure. For existing licensed facilities that are
29 not equipped with an automatic fire sprinkler system, the
30 administrator shall evaluate the evacuation capability of
31 residents at least annually. The evacuation capability

1 evaluation for each facility not equipped with an automatic
2 fire sprinkler system shall be validated, without liability,
3 by the State Fire Marshal, by the local fire marshal, or by
4 the local authority having jurisdiction over firesafety,
5 before the license renewal date. If the State Fire Marshal,
6 local fire marshal, or local authority having jurisdiction
7 over firesafety has reason to believe that the evacuation
8 capability of a facility as reported by the administrator may
9 have changed, it may, with assistance from the facility
10 administrator, reevaluate the evacuation capability through
11 timed exiting drills. Translation of timed fire exiting drills
12 to evacuation capability may be determined:

13 (I) Three minutes or less: prompt.

14 (II) More than 3 minutes, but not more than 13
15 minutes: slow.

16 (III) More than 13 minutes: impractical.

17 b. The Office of the State Fire Marshal shall provide
18 or cause the provision of training and education on the proper
19 application of Chapter 5, NFPA 101A, 1995 edition, to its
20 employees, to staff of the Agency for Health Care
21 Administration who are responsible for regulating facilities
22 under this part, and to local governmental inspectors. The
23 Office of the State Fire Marshal shall provide or cause the
24 provision of this training within its existing budget, but may
25 charge a fee for this training to offset its costs. The
26 initial training must be delivered within 6 months after July
27 1, 1995, and as needed thereafter.

28 c. The Office of the State Fire Marshal, in
29 cooperation with provider associations, shall provide or cause
30 the provision of a training program designed to inform
31 facility operators on how to properly review bid documents

1 relating to the installation of automatic fire sprinklers.

2 The Office of the State Fire Marshal shall provide or cause
3 the provision of this training within its existing budget, but
4 may charge a fee for this training to offset its costs. The
5 initial training must be delivered within 6 months after July
6 1, 1995, and as needed thereafter.

7 d. The administrator of a licensed facility shall sign
8 an affidavit verifying the number of residents occupying the
9 facility at the time of the evacuation capability evaluation.

10 2. Firesafety requirements.--

11 a. Except for the special applications provided
12 herein, effective January 1, 1996, the provisions of the
13 National Fire Protection Association, Life Safety Code, NFPA
14 101, 1994 edition, Chapter 22 for new facilities and Chapter
15 23 for existing facilities shall be the uniform fire code
16 applied by the State Fire Marshal for assisted living
17 facilities, pursuant to s. 633.022.

18 b. Any new facility, regardless of size, that applies
19 for a license on or after January 1, 1996, must be equipped
20 with an automatic fire sprinkler system. The exceptions as
21 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
22 adopted herein, apply to any new facility housing eight or
23 fewer residents. On July 1, 1995, local governmental entities
24 responsible for the issuance of permits for construction shall
25 inform, without liability, any facility whose permit for
26 construction is obtained prior to January 1, 1996, of this
27 automatic fire sprinkler requirement. As used in this part,
28 the term "a new facility" does not mean an existing facility
29 that has undergone change of ownership.

30 c. Notwithstanding any provision of s. 633.022 or of
31 the National Fire Protection Association, NFPA 101A, Chapter

1 5, 1995 edition, to the contrary, any existing facility
2 housing eight or fewer residents is not required to install an
3 automatic fire sprinkler system, nor to comply with any other
4 requirement in Chapter 23, NFPA 101, 1994 edition, that
5 exceeds the firesafety requirements of NFPA 101, 1988 edition,
6 that applies to this size facility, unless the facility has
7 been classified as impractical to evacuate. Any existing
8 facility housing eight or fewer residents that is classified
9 as impractical to evacuate must install an automatic fire
10 sprinkler system within the timeframes granted in this
11 section.

12 d. Any existing facility that is required to install
13 an automatic fire sprinkler system under this paragraph need
14 not meet other firesafety requirements of Chapter 23, NFPA
15 101, 1994 edition, which exceed the provisions of NFPA 101,
16 1988 edition. The mandate contained in this paragraph which
17 requires certain facilities to install an automatic fire
18 sprinkler system supersedes any other requirement.

19 e. This paragraph does not supersede the exceptions
20 granted in NFPA 101, 1988 edition or 1994 edition.

21 f. This paragraph does not exempt facilities from
22 other firesafety provisions adopted under s. 633.022 and local
23 building code requirements in effect before July 1, 1995.

24 g. A local government may charge fees only in an
25 amount not to exceed the actual expenses incurred by local
26 government relating to the installation and maintenance of an
27 automatic fire sprinkler system in an existing and properly
28 licensed assisted living facility structure as of January 1,
29 1996.

30 h. If a licensed facility undergoes major
31 reconstruction or addition to an existing building on or after

1 January 1, 1996, the entire building must be equipped with an
2 automatic fire sprinkler system. Major reconstruction of a
3 building means repair or restoration that costs in excess of
4 50 percent of the value of the building as reported on the tax
5 rolls, excluding land, before reconstruction. Multiple
6 reconstruction projects within a 5-year period the total costs
7 of which exceed 50 percent of the initial value of the
8 building at the time the first reconstruction project was
9 permitted are to be considered as major reconstruction.
10 Application for a permit for an automatic fire sprinkler
11 system is required upon application for a permit for a
12 reconstruction project that creates costs that go over the
13 50-percent threshold.

14 i. Any facility licensed before January 1, 1996, that
15 is required to install an automatic fire sprinkler system
16 shall ensure that the installation is completed within the
17 following timeframes based upon evacuation capability of the
18 facility as determined under subparagraph 1.:

19 (I) Impractical evacuation capability, 24 months.

20 (II) Slow evacuation capability, 48 months.

21 (III) Prompt evacuation capability, 60 months.

22

23 The beginning date from which the deadline for the automatic
24 fire sprinkler installation requirement must be calculated is
25 upon receipt of written notice from the local fire official
26 that an automatic fire sprinkler system must be installed. The
27 local fire official shall send a copy of the document
28 indicating the requirement of a fire sprinkler system to the
29 Agency for Health Care Administration.

30 j. It is recognized that the installation of an
31 automatic fire sprinkler system may create financial hardship

1 for some facilities. The appropriate local fire official
2 shall, without liability, grant two 1-year extensions to the
3 timeframes for installation established herein, if an
4 automatic fire sprinkler installation cost estimate and proof
5 of denial from two financial institutions for a construction
6 loan to install the automatic fire sprinkler system are
7 submitted. However, for any facility with a class I or class
8 II, or a history of uncorrected class III, firesafety
9 deficiencies, an extension must not be granted. The local
10 fire official shall send a copy of the document granting the
11 time extension to the Agency for Health Care Administration.

12 k. A facility owner whose facility is required to be
13 equipped with an automatic fire sprinkler system under Chapter
14 23, NFPA 101, 1994 edition, as adopted herein, must disclose
15 to any potential buyer of the facility that an installation of
16 an automatic fire sprinkler requirement exists. The sale of
17 the facility does not alter the timeframe for the installation
18 of the automatic fire sprinkler system.

19 l. Existing facilities required to install an
20 automatic fire sprinkler system as a result of
21 construction-type restrictions in Chapter 23, NFPA 101, 1994
22 edition, as adopted herein, or evacuation capability
23 requirements shall be notified by the local fire official in
24 writing of the automatic fire sprinkler requirement, as well
25 as the appropriate date for final compliance as provided in
26 this subparagraph. The local fire official shall send a copy
27 of the document to the Agency for Health Care Administration.

28 m. Except in cases of life-threatening fire hazards,
29 if an existing facility experiences a change in the evacuation
30 capability, or if the local authority having jurisdiction
31 identifies a construction-type restriction, such that an

1 automatic fire sprinkler system is required, it shall be
2 afforded time for installation as provided in this
3 subparagraph.

4
5 Facilities that are fully sprinkled and in compliance with
6 other firesafety standards are not required to conduct more
7 than one of the required fire drills between the hours of 11
8 p.m. and 7 a.m., per year. In lieu of the remaining drills,
9 staff responsible for residents during such hours may be
10 required to participate in a mock drill that includes a review
11 of evacuation procedures. Such standards must be included or
12 referenced in the rules adopted by the State Fire Marshal.
13 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
14 final administrative authority for firesafety standards
15 established and enforced pursuant to this section. All
16 licensed facilities must have an annual fire inspection
17 conducted by the local fire marshal or authority having
18 jurisdiction.

19 3. Resident elopement requirements.--Each facility
20 shall conduct a minimum of two resident elopement prevention
21 and response drills per year. All administrators and direct
22 care staff shall participate in the drills, which must include
23 a review of procedures to address resident elopement. Each
24 facility shall document the implementation of the drills and
25 ensure that the drills are conducted in a manner consistent
26 with the facility's resident elopement policies and
27 procedures.

28 (b) The preparation and annual update of a
29 comprehensive emergency management plan. Such standards must
30 be included in the rules adopted by the agency ~~department~~
31 after consultation with the Department of Community Affairs.

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

20 (c) The number, training, and qualifications of all
21 personnel having responsibility for the care of residents.
22 The rules must require adequate staff to provide for the
23 safety of all residents. Facilities licensed for 17 or more
24 residents are required to maintain an alert staff for 24 hours
25 per day.

26 (d) All sanitary conditions within the facility and
27 its surroundings which will ensure the health and comfort of
28 residents. The rules must clearly delineate the
29 responsibilities of the agency's licensure and survey staff,
30 the county health departments, and the local authority having
31 jurisdiction over fire safety and ensure that inspections are

1 not duplicative. The agency may collect fees for food service
2 inspections conducted by the county health departments and
3 transfer such fees to the Department of Health.

4 (e) ~~License application and license renewal, transfer~~
5 ~~of ownership,~~ Proper management of resident funds and personal
6 property, surety bonds, resident contracts, refund policies,
7 ~~financial ability to operate,~~ and facility and staff records.

8 (f) Inspections, complaint investigations,
9 ~~moratoriums,~~ classification of deficiencies, levying and
10 enforcement of penalties, and use of income from fees and
11 fines.

12 (g) The enforcement of the resident bill of rights
13 specified in s. 400.428.

14 (h) The care and maintenance of residents, which must
15 include, but is not limited to:

- 16 1. The supervision of residents;
- 17 2. The provision of personal services;
- 18 3. The provision of, or arrangement for, social and
19 leisure activities;
- 20 4. The arrangement for appointments and transportation
21 to appropriate medical, dental, nursing, or mental health
22 services, as needed by residents;
- 23 5. The management of medication;
- 24 6. The nutritional needs of residents;
- 25 7. Resident records; and
- 26 8. Internal risk management and quality assurance.

27 (i) Facilities holding a limited nursing, extended
28 congregate care, or limited mental health license.

29 (j) The establishment of specific criteria to define
30 appropriateness of resident admission and continued residency
31

1 in a facility holding a standard, limited nursing, extended
2 congregate care, and limited mental health license.

3 (k) The use of physical or chemical restraints. The
4 use of physical restraints is limited to half-bed rails as
5 prescribed and documented by the resident's physician with the
6 consent of the resident or, if applicable, the resident's
7 representative or designee or the resident's surrogate,
8 guardian, or attorney in fact. The use of chemical restraints
9 is limited to prescribed dosages of medications authorized by
10 the resident's physician and must be consistent with the
11 resident's diagnosis. Residents who are receiving medications
12 that can serve as chemical restraints must be evaluated by
13 their physician at least annually to assess:

14 1. The continued need for the medication.

15 2. The level of the medication in the resident's
16 blood.

17 3. The need for adjustments in the prescription.

18 (2) In adopting any rules pursuant to this part, the
19 agency ~~department~~, in conjunction with the department ~~agency~~,
20 shall make distinct standards for facilities based upon
21 facility size; the types of care provided; the physical and
22 mental capabilities and needs of residents; the type,
23 frequency, and amount of services and care offered; and the
24 staffing characteristics of the facility. Rules developed
25 pursuant to this section shall not restrict the use of shared
26 staffing and shared programming in facilities that are part of
27 retirement communities that provide multiple levels of care
28 and otherwise meet the requirements of law and rule. Except
29 for uniform firesafety standards, the agency ~~department~~ shall
30 adopt by rule separate and distinct standards for facilities
31 with 16 or fewer beds and for facilities with 17 or more beds.

1 The standards for facilities with 16 or fewer beds shall be
2 appropriate for a noninstitutional residential environment,
3 provided that the structure is no more than two stories in
4 height and all persons who cannot exit the facility unassisted
5 in an emergency reside on the first floor. The agency
6 ~~department~~, in conjunction with the department ~~agency~~, may
7 make other distinctions among types of facilities as necessary
8 to enforce the provisions of this part. Where appropriate, the
9 agency shall offer alternate solutions for complying with
10 established standards, based on distinctions made by the
11 department and the agency relative to the physical
12 characteristics of facilities and the types of care offered
13 therein.

14 (3) ~~The department shall submit a copy of proposed~~
15 ~~rules to the Speaker of the House of Representatives, the~~
16 ~~President of the Senate, and appropriate committees of~~
17 ~~substance for review and comment prior to the promulgation~~
18 ~~thereof.~~

19 (a) Rules adopted ~~promulgated~~ by the agency ~~department~~
20 shall encourage the development of homelike facilities which
21 promote the dignity, individuality, personal strengths, and
22 decisionmaking ability of residents.

23 (b) The agency, in consultation with the department,
24 may waive rules promulgated pursuant to this part in order to
25 demonstrate and evaluate innovative or cost-effective
26 congregate care alternatives which enable individuals to age
27 in place. Such waivers may be granted only in instances where
28 there is reasonable assurance that the health, safety, or
29 welfare of residents will not be endangered. To apply for a
30 waiver, the licensee shall submit to the agency a written
31 description of the concept to be demonstrated, including

1 goals, objectives, and anticipated benefits; the number and
2 types of residents who will be affected, if applicable; a
3 brief description of how the demonstration will be evaluated;
4 and any other information deemed appropriate by the agency.
5 Any facility granted a waiver shall submit a report of
6 findings to the agency and the department within 12 months.
7 At such time, the agency may renew or revoke the waiver or
8 pursue any regulatory or statutory changes necessary to allow
9 other facilities to adopt the same practices. The agency
10 ~~department~~ may by rule clarify terms and establish waiver
11 application procedures, criteria for reviewing waiver
12 proposals, and procedures for reporting findings, as necessary
13 to implement this subsection.

14 (4) The agency may use an abbreviated biennial
15 standard licensure inspection that consists of a review of key
16 quality-of-care standards in lieu of a full inspection in
17 facilities which have a good record of past performance.
18 However, a full inspection shall be conducted in facilities
19 which have had a history of class I or class II violations,
20 uncorrected class III violations, confirmed ombudsman council
21 complaints, or confirmed licensure complaints, within the
22 previous licensure period immediately preceding the inspection
23 or when a potentially serious problem is identified during the
24 abbreviated inspection. The agency, in consultation with the
25 department, shall develop the key quality-of-care standards
26 with input from the State Long-Term Care Ombudsman Council and
27 representatives of provider groups for incorporation into its
28 rules. The agency ~~department~~, in consultation with the
29 ~~department~~ agency, shall report annually to the Legislature
30 concerning its implementation of this subsection. The report
31 shall include, at a minimum, the key quality-of-care standards

1 | which have been developed; the number of facilities identified
2 | as being eligible for the abbreviated inspection; the number
3 | of facilities which have received the abbreviated inspection
4 | and, of those, the number that were converted to full
5 | inspection; the number and type of subsequent complaints
6 | received by the agency or department on facilities which have
7 | had abbreviated inspections; any recommendations for
8 | modification to this subsection; any plans by the agency to
9 | modify its implementation of this subsection; and any other
10 | information which the agency ~~department~~ believes should be
11 | reported.

12 | ~~(5) A fee shall be charged by the department to any~~
13 | ~~person requesting a copy of this part or rules promulgated~~
14 | ~~under this part. Such fees shall not exceed the actual cost~~
15 | ~~of duplication and postage.~~

16 | Section 102. Subsection (4) of section 400.442,
17 | Florida Statutes, is amended to read:

18 | 400.442 Pharmacy and dietary services.--

19 | (4) The agency ~~department~~ may by rule establish
20 | procedures and specify documentation as necessary to implement
21 | this section.

22 | Section 103. Subsection (3) of section 400.444,
23 | Florida Statutes, is amended to read:

24 | 400.444 Construction and renovation; requirements.--

25 | (3) The agency ~~department~~ may adopt rules to establish
26 | procedures and specify the documentation necessary to
27 | implement this section.

28 | Section 104. Subsections (1), (2), and (3) of section
29 | 400.447 and section 400.451, Florida Statutes, are repealed.

30 |

31 |

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. Subsections (1) and (2) of section
25 400.487, Florida Statutes, are amended to read:

26 400.487 Home health service agreements; physician's,
27 physician's assistant's, and advanced registered nurse
28 practitioner's treatment orders; patient assessment;
29 establishment and review of plan of care; provision of
30 services; orders not to resuscitate.--

31

1 (1) Services provided by a home health agency must be
2 covered by an agreement between the home health agency and the
3 patient or the patient's legal representative specifying the
4 home health services to be provided, the rates or charges for
5 services paid with private funds, and the sources ~~method~~ of
6 payment, which may include Medicare, Medicaid, private
7 insurance, personal funds, or a combination thereof. A home
8 health agency providing skilled care must make an assessment
9 of the patient's needs within 48 hours after the start of
10 services.

11 (2) When required by the provisions of chapter 464;
12 part I, part III, or part V of chapter 468; or chapter 486,
13 the attending physician, physician's assistant, or advanced
14 registered nurse practitioner, acting within his or her
15 respective scope of practice, shall ~~for a patient who is to~~
16 ~~receive skilled care must~~ establish treatment orders for a
17 patient who is to receive skilled care. The treatment orders
18 must be signed by the physician, physician's assistant, or
19 advanced registered nurse practitioner before a claim for
20 payment for the skilled services is submitted by the home
21 health agency. If the claim is submitted to a managed care
22 organization, the treatment orders must be signed in the time
23 allowed under the provider agreement. The treatment orders
24 shall ~~within 30 days after the start of care and must~~ be
25 reviewed, as frequently as the patient's illness requires, by
26 the physician, physician's assistant, or advanced registered
27 nurse practitioner in consultation with the home health agency
28 ~~personnel that provide services to the patient~~.

29 Section 112. Section 400.494, Florida Statutes, is
30 amended to read:

31 400.494 Information about patients confidential.--

1 (1) Information about patients received by persons
2 employed by, or providing services to, a home health agency or
3 received by the licensing agency through reports or inspection
4 shall be confidential and exempt from the provisions of s.
5 119.07(1) and may ~~shall~~ not be disclosed to any person other
6 than the patient without the written consent of that patient
7 or the patient's guardian.

8 (2) This section does not apply to information
9 lawfully requested by the Medicaid Fraud Control Unit of the
10 Office of the Attorney General or requested under s. 408.811
11 ~~Department of Legal Affairs.~~

12 Section 113. Section 400.495, Florida Statutes, is
13 amended to read:

14 400.495 Notice of toll-free telephone number for
15 central abuse hotline.--In addition to the requirements of s.
16 408.810(5), ~~On or before the first day home health services~~
17 ~~are provided to a patient, any home health agency or nurse~~
18 ~~registry licensed under this part must inform the patient and~~
19 ~~his or her immediate family, if appropriate, of the right to~~
20 ~~report abusive, neglectful, or exploitative practices. The~~
21 ~~statewide toll free telephone number for the central abuse~~
22 ~~hotline must be provided to patients in a manner that is~~
23 ~~clearly legible and must include the words: "To report abuse,~~
24 ~~neglect, or exploitation, please call toll free ...(phone~~
25 ~~number)...."~~ the Agency for Health Care Administration shall
26 adopt rules ~~that provide for 90 days' advance notice of a~~
27 ~~change in the toll free telephone number and that outline due~~
28 process procedures, as provided under chapter 120, for home
29 health agency personnel and nurse registry personnel who are
30 reported to the central abuse hotline. Home health agencies
31

1 and nurse registries shall establish appropriate policies and
2 procedures for providing such notice to patients.

3 Section 114. Section 400.497, Florida Statutes, is
4 amended to read:

5 400.497 Rules establishing minimum standards.--The
6 agency shall adopt, publish, and enforce rules to implement
7 part II of chapter 408, this part, including, as applicable,
8 ss. 400.506 and 400.509, which must provide reasonable and
9 fair minimum standards relating to:

10 (1) The home health aide competency test and home
11 health aide training. The agency shall create the home health
12 aide competency test and establish the curriculum and
13 instructor qualifications for home health aide training.
14 Licensed home health agencies may provide this training and
15 shall furnish documentation of such training to other licensed
16 home health agencies upon request. Successful passage of the
17 competency test by home health aides may be substituted for
18 the training required under this section and any rule adopted
19 pursuant thereto.

20 (2) Shared staffing. The agency shall allow shared
21 staffing if the home health agency is part of a retirement
22 community that provides multiple levels of care, is located on
23 one campus, is licensed under this chapter, and otherwise
24 meets the requirements of law and rule.

25 (3) The criteria for the frequency of onsite licensure
26 surveys.

27 (4) Licensure application and renewal.

28 (5) The requirements for onsite and electronic
29 accessibility of supervisory personnel of home health
30 agencies.

31 (6) Information to be included in patients' records.

1 (7) Geographic service areas.

2 (8) Preparation of a comprehensive emergency
3 management plan pursuant to s. 400.492.

4 (a) The Agency for Health Care Administration shall
5 adopt rules establishing minimum criteria for the plan and
6 plan updates, with the concurrence of the Department of Health
7 and in consultation with the Department of Community Affairs.

8 (b) The rules must address the requirements in s.
9 400.492. In addition, the rules shall provide for the
10 maintenance of patient-specific medication lists that can
11 accompany patients who are transported from their homes.

12 (c) The plan is subject to review and approval by the
13 county health department. During its review, the county health
14 department shall ensure that the following agencies, at a
15 minimum, are given the opportunity to review the plan:

- 16 1. The local emergency management agency.
- 17 2. The Agency for Health Care Administration.
- 18 3. The local chapter of the American Red Cross or
19 other lead sheltering agency.
- 20 4. The district office of the Department of Children
21 and Family Services.

22
23 The county health department shall complete its review within
24 60 days after receipt of the plan and shall either approve the
25 plan or advise the home health agency of necessary revisions.

26 (d) For any home health agency that operates in more
27 than one county, the Department of Health shall review the
28 plan, after consulting with all of the county health
29 departments, the agency, and all the local chapters of the
30 American Red Cross or other lead sheltering agencies in the
31 areas of operation for that particular home health agency. The

1 Department of Health shall complete its review within 90 days
2 after receipt of the plan and shall either approve the plan or
3 advise the home health agency of necessary revisions. The
4 Department of Health shall make every effort to avoid imposing
5 differing requirements based on differences between counties
6 on the home health agency.

7 (e) The requirements in this subsection do not apply
8 to:

9 1. A facility that is certified under chapter 651 and
10 has a licensed home health agency used exclusively by
11 residents of the facility; or

12 2. A retirement community that consists of residential
13 units for independent living and either a licensed nursing
14 home or an assisted living facility, and has a licensed home
15 health agency used exclusively by the residents of the
16 retirement community, provided the comprehensive emergency
17 management plan for the facility or retirement community
18 provides for continuous care of all residents with special
19 needs during an emergency.

20 Section 115. Section 400.506, Florida Statutes, is
21 amended to read:

22 400.506 Licensure of nurse registries; requirements;
23 penalties.--

24 (1) A nurse registry is exempt from the licensing
25 requirements of a home health agency but must be licensed as a
26 nurse registry. The requirements of part II of chapter 408
27 apply to the provision of services that necessitate licensure
28 pursuant to 400.506-400.518 and part II of chapter 408 and to
29 entities licensed by or applying for such licensed from the
30 Agency for Health Care Administration pursuant to ss.
31 400.506-400.518. Each operational site of the nurse registry

1 must be licensed, unless there is more than one site within a
2 county. If there is more than one site within a county, only
3 one license per county is required. Each operational site
4 must be listed on the license.

5 (2) Each applicant for licensure must comply with all
6 provisions of part II of chapter 408, with the exception of s.
7 408.810(6) and (10). ~~the following requirements:~~

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

19 ~~(b) The agency may require background screening of any~~
20 ~~other individual who is an applicant if the agency has~~
21 ~~probable cause to believe that he or she has been convicted of~~
22 ~~a crime or has committed any other offense prohibited under~~
23 ~~the level 2 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 ~~health care or assisted living licensure requirements of this~~
28 ~~state is acceptable in fulfillment of the requirements of~~
29 ~~paragraph (a).~~

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

1 ~~undergo background screening has met the standards for the~~
2 ~~Department of Law Enforcement background check but the agency~~
3 ~~has not yet received background screening results from the~~
4 ~~Federal Bureau of Investigation. A standard license may be~~
5 ~~granted to the applicant upon the agency's receipt of a report~~
6 ~~of the results of the Federal Bureau of Investigation~~
7 ~~background screening for each individual required by this~~
8 ~~section to undergo background screening which confirms that~~
9 ~~all standards have been met, or upon the granting of a~~
10 ~~disqualification exemption by the agency as set forth in~~
11 ~~chapter 435. Any other person who is required to undergo level~~
12 ~~2 background screening may serve in his or her capacity~~
13 ~~pending the agency's receipt of the report from the Federal~~
14 ~~Bureau of Investigation. However, the person may not continue~~
15 ~~to serve if the report indicates any violation of background~~
16 ~~screening standards and a disqualification exemption has not~~
17 ~~been requested of and granted by the agency as set forth in~~
18 ~~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 the license if any~~
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 (3) In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under ss. 400.508-400.518 and part II of chapter
4 408. The amount of the fee shall be established by rule and
5 may not exceed \$2,000 per biennium. Application for license
6 must be made to the Agency for Health Care Administration on
7 forms furnished by it and must be accompanied by the
8 appropriate licensure fee, as established by rule and not to
9 exceed the cost of regulation under this part. The licensure
10 fee for nurse registries may not exceed \$1,000 and must be
11 deposited in the Health Care Trust Fund.

12 ~~(4) The Agency for Health Care Administration may~~
13 ~~deny, revoke, or suspend a license or impose an administrative~~
14 ~~fine in the manner provided in chapter 120 against a nurse~~
15 ~~registry that:~~

16 ~~(a) Fails to comply with this section or applicable~~
17 ~~rules.~~

18 ~~(b) Commits an intentional, reckless, or negligent act~~
19 ~~that materially affects the health or safety of a person~~
20 ~~receiving services.~~

21 ~~(5) A license issued for the operation of a nurse~~
22 ~~registry, unless sooner suspended or revoked, expires 1 year~~
23 ~~after its date of issuance. Sixty days before the expiration~~
24 ~~date, an application for renewal must be submitted to the~~
25 ~~Agency for Health Care Administration on forms furnished by~~
26 ~~it. The Agency for Health Care Administration shall renew the~~
27 ~~license if the applicant has met the requirements of this~~
28 ~~section and applicable rules. A nurse registry against which~~
29 ~~a revocation or suspension proceeding is pending at the time~~
30 ~~of license renewal may be issued a conditional license~~
31 ~~effective until final disposition by the Agency for Health~~

1 ~~Care Administration of such proceedings. If judicial relief is~~
2 ~~sought from the final disposition, the court having~~
3 ~~jurisdiction may issue a conditional license for the duration~~
4 ~~of the judicial proceeding.~~

5 ~~(6) The Agency for Health Care Administration may~~
6 ~~institute injunctive proceedings under s. 400.515.~~

7 (4)(7) A person that offers or advertises to the
8 public that it provides any service for which licensure is
9 required under this section must include in such advertisement
10 the license number issued to it by the Agency for Health Care
11 Administration.

12 ~~(8) It is unlawful for a person to offer or advertise~~
13 ~~to the public services as defined by rule without obtaining a~~
14 ~~valid license from the Agency for Health Care Administration.~~
15 ~~It is unlawful for any holder of a license to advertise or~~
16 ~~hold out to the public that he or she holds a license for~~
17 ~~other than that for which he or she actually holds a license.~~
18 ~~A person who violates this subsection is subject to injunctive~~
19 ~~proceedings under s. 400.515.~~

20 ~~(9) Any duly authorized officer or employee of the~~
21 ~~Agency for Health Care Administration may make such~~
22 ~~inspections and investigations as are necessary to respond to~~
23 ~~complaints or to determine the state of compliance with this~~
24 ~~section and applicable rules.~~

25 ~~(a) If, in responding to a complaint, an agent or~~
26 ~~employee of the Agency for Health Care Administration has~~
27 ~~reason to believe that a crime has been committed, he or she~~
28 ~~shall notify the appropriate law enforcement agency.~~

29 ~~(b) If, in responding to a complaint, an agent or~~
30 ~~employee of the Agency for Health Care Administration has~~
31 ~~reason to believe that abuse, neglect, or exploitation has~~

1 ~~occurred, according to the definitions in chapter 415, he or~~
2 ~~she shall file a report under chapter 415.~~

3 (5)~~(10)~~(a) A nurse registry may refer for contract in
4 private residences registered nurses and licensed practical
5 nurses registered and licensed under part I of chapter 464,
6 certified nursing assistants certified under part II of
7 chapter 464, home health aides who present documented proof of
8 successful completion of the training required by rule of the
9 agency, and companions or homemakers for the purposes of
10 providing those services authorized under s. 400.509(1). Each
11 person referred by a nurse registry must provide current
12 documentation that he or she is free from communicable
13 diseases.

14 (b) A certified nursing assistant or home health aide
15 may be referred for a contract to provide care to a patient in
16 his or her home only if that patient is under a physician's
17 care. A certified nursing assistant or home health aide
18 referred for contract in a private residence shall be limited
19 to assisting a patient with bathing, dressing, toileting,
20 grooming, eating, physical transfer, and those normal daily
21 routines the patient could perform for himself or herself were
22 he or she physically capable. A certified nursing assistant
23 or home health aide may not provide medical or other health
24 care services that require specialized training and that may
25 be performed only by licensed health care professionals. The
26 nurse registry shall obtain the name and address of the
27 attending physician and send written notification to the
28 physician within 48 hours after a contract is concluded that a
29 certified nursing assistant or home health aide will be
30 providing care for that patient.

31

1 (c) A nurse registry shall, at the time of contracting
2 for services through the nurse registry, advise the patient,
3 the patient's family, or a person acting on behalf of the
4 patient of the availability of registered nurses to make
5 visits to the patient's home at an additional cost. A
6 ~~registered nurse shall make monthly visits to the patient's~~
7 ~~home to assess the patient's condition and quality of care~~
8 ~~being provided by the certified nursing assistant or home~~
9 ~~health aide.~~ Any condition that ~~which~~ in the professional
10 judgment of the nurse requires further medical attention shall
11 be reported to the attending physician and the nurse registry.
12 The assessment shall become a part of the patient's file with
13 the nurse registry ~~and may be reviewed by the agency during~~
14 ~~their survey procedure.~~

15 ~~(6)(11)~~ A person who is referred by a nurse registry
16 for contract in private residences and who is not a nurse
17 licensed under part I of chapter 464 may perform only those
18 services or care to clients that the person has been certified
19 to perform or trained to perform as required by law or rules
20 of the Agency for Health Care Administration or the Department
21 of Business and Professional Regulation. Providing services
22 beyond the scope authorized under this subsection constitutes
23 the unauthorized practice of medicine or a violation of the
24 Nurse Practice Act and is punishable as provided under chapter
25 458, chapter 459, or part I of chapter 464.

26 ~~(7)(12)~~ Each nurse registry must require every
27 applicant for contract to complete an application form
28 providing the following information:

29 (a) The name, address, date of birth, and social
30 security number of the applicant.

31

1 (b) The educational background and employment history
2 of the applicant.

3 (c) The number and date of the applicable license or
4 certification.

5 (d) When appropriate, information concerning the
6 renewal of the applicable license, registration, or
7 certification.

8 ~~(8)~~~~(13)~~ Each nurse registry must comply with the
9 procedures set forth in s. 400.512 for maintaining records of
10 the employment history of all persons referred for contract
11 and is subject to the standards and conditions set forth in
12 that section. However, an initial screening may not be
13 required for persons who have been continuously registered
14 with the nurse registry since September 30, 1990.

15 ~~(9)~~~~(14)~~ The nurse registry must maintain the
16 application on file, and that file must be open to the
17 inspection of the Agency for Health Care Administration. The
18 nurse registry must maintain on file the name and address of
19 the client to whom the nurse or other nurse registry personnel
20 is sent for contract and the amount of the fee received by the
21 nurse registry. A nurse registry must maintain the file that
22 includes the application and other applicable documentation
23 for 3 years after the date of the last file entry of
24 client-related information.

25 ~~(10)~~~~(15)~~ Nurse registries shall assist persons who
26 would need assistance and sheltering during evacuations
27 because of physical, mental, or sensory disabilities in
28 registering with the appropriate local emergency management
29 agency pursuant to s. 252.355.

30 ~~(11)~~~~(16)~~ Each nurse registry shall prepare and
31 maintain a comprehensive emergency management plan that is

1 consistent with the criteria in this subsection and with the
2 local special needs plan. The plan shall be updated annually.
3 The plan shall specify how the nurse registry shall facilitate
4 the provision of continuous care by persons referred for
5 contract to persons who are registered pursuant to s. 252.355
6 during an emergency that interrupts the provision of care or
7 services in private residences.

8 (a) All persons referred for contract who care for
9 persons registered pursuant to s. 252.355 must include in the
10 patient record a description of how care will be continued
11 during a disaster or emergency that interrupts the provision
12 of care in the patient's home. It shall be the responsibility
13 of the person referred for contract to ensure that continuous
14 care is provided.

15 (b) Each nurse registry shall maintain a current
16 prioritized list of patients in private residences who are
17 registered pursuant to s. 252.355 and are under the care of
18 persons referred for contract and who need continued services
19 during an emergency. This list shall indicate, for each
20 patient, if the client is to be transported to a special needs
21 shelter and if the patient is receiving skilled nursing
22 services. Nurse registries shall make this list available to
23 county health departments and to local emergency management
24 agencies upon request.

25 (c) Each person referred for contract who is caring
26 for a patient who is registered pursuant to s. 252.355 shall
27 provide a list of the patient's medication and equipment needs
28 to the nurse registry. Each person referred for contract shall
29 make this information available to county health departments
30 and to local emergency management agencies upon request.

31

1 (d) Each person referred for contract shall not be
2 required to continue to provide care to patients in emergency
3 situations that are beyond the person's control and that make
4 it impossible to provide services, such as when roads are
5 impassable or when patients do not go to the location
6 specified in their patient records.

7 (e) The comprehensive emergency management plan
8 required by this subsection is subject to review and approval
9 by the county health department. During its review, the county
10 health department shall ensure that, at a minimum, the local
11 emergency management agency, the Agency for Health Care
12 Administration, and the local chapter of the American Red
13 Cross or other lead sheltering agency are given the
14 opportunity to review the plan. The county health department
15 shall complete its review within 60 days after receipt of the
16 plan and shall either approve the plan or advise the nurse
17 registry of necessary revisions.

18 (f) The Agency for Health Care Administration shall
19 adopt rules establishing minimum criteria for the
20 comprehensive emergency management plan and plan updates
21 required by this subsection, with the concurrence of the
22 Department of Health and in consultation with the Department
23 of Community Affairs.

24 ~~(12)~~~~(17)~~ All persons referred for contract in private
25 residences by a nurse registry must comply with the following
26 requirements for a plan of treatment:

27 (a) When, in accordance with the privileges and
28 restrictions imposed upon a nurse under part I of chapter 464,
29 the delivery of care to a patient is under the direction or
30 supervision of a physician or when a physician is responsible
31 for the medical care of the patient, a medical plan of

1 treatment must be established for each patient receiving care
2 or treatment provided by a licensed nurse in the home. The
3 original medical plan of treatment must be timely signed by
4 the physician, physician's assistant, or advanced registered
5 nurse practitioner, acting within his or her respective scope
6 of practice, and reviewed ~~by him or her~~ in consultation with
7 the licensed nurse at least every 2 months. Any additional
8 order or change in orders must be obtained from the physician,
9 physician's assistant, or advanced registered nurse
10 practitioner and reduced to writing and timely signed by the
11 physician, physician's assistant, or advanced registered nurse
12 practitioner. The delivery of care under a medical plan of
13 treatment must be substantiated by the appropriate nursing
14 notes or documentation made by the nurse in compliance with
15 nursing practices established under part I of chapter 464.

16 (b) Whenever a medical plan of treatment is
17 established for a patient, the initial medical plan of
18 treatment, any amendment to the plan, additional order or
19 change in orders, and copy of nursing notes must be filed in
20 the office of the nurse registry.

21 ~~(13)(18)~~ The nurse registry must comply with the
22 notice requirements of s. 400.495, relating to abuse
23 reporting.

24 ~~(14)(19)~~ In addition to any other penalties imposed
25 pursuant to this section or part, the agency may assess costs
26 related to an investigation that results in a successful
27 prosecution, ~~excluding costs associated with an attorney's~~
28 ~~time. If the agency imposes such an assessment and the~~
29 ~~assessment is not paid, and if challenged is not the subject~~
30 ~~of a pending appeal, prior to the renewal of the license, the~~

31

1 ~~license shall not be issued until the assessment is paid or~~
2 ~~arrangements for payment of the assessment are made.~~

3 ~~(15)(20)~~ The Agency for Health Care Administration
4 shall adopt rules to implement this section and part II of
5 chapter 408.

6 Section 116. Section 400.509, Florida Statutes, is
7 amended to read:

8 400.509 Registration of particular service providers
9 exempt from licensure; certificate of registration; regulation
10 of registrants.--

11 (1) Any organization that provides companion services
12 or homemaker services and does not provide a home health
13 service to a person is exempt from licensure under this part.
14 However, any organization that provides companion services or
15 homemaker services must register with the agency.

16 (2) The requirements of part II of chapter 408 apply
17 to the provision of services that necessitate registration or
18 licensure pursuant to ss. 400.509-400.512 and ss.
19 408.801-408.819 and to entities registered by or applying for
20 such registration from the Agency for Health Care
21 Administration pursuant to ss. 400.509-400.512. Each applicant
22 for registration must comply with all provisions of part II of
23 chapter 408, with the exception of s. 408.810(6)-(10).

24 ~~Registration consists of annually filing with the agency,~~
25 ~~under oath, on forms provided by it, the following~~
26 ~~information:~~

27 ~~(a) If the registrant is a firm or partnership, the~~
28 ~~name, address, date of birth, and social security number of~~
29 ~~every member.~~

30 ~~(b) If the registrant is a corporation or association,~~
31 ~~its name and address; the name, address, date of birth, and~~

1 ~~social security number of each of its directors and officers;~~
2 ~~and the name and address of each person having at least a 5~~
3 ~~percent interest in the corporation or association.~~

4 ~~(c) The name, address, date of birth, and social~~
5 ~~security number of each person employed by or under contract~~
6 ~~with the organization.~~

7 (3) In accordance with s. 408.805, an applicant or
8 registrant shall pay a fee for each registration issued under
9 this part and part II of chapter 408. The amount of the fee
10 shall be \$50 per biennium. The agency shall charge a
11 registration fee of \$25 to be submitted with the information
12 required under subsection (2).

13 ~~(4) Each applicant for registration must comply with~~
14 ~~the following requirements:~~

15 ~~(a) Upon receipt of a completed, signed, and dated~~
16 ~~application, the agency shall require background screening, in~~
17 ~~accordance with the level 1 standards for screening set forth~~
18 ~~in chapter 435, of every individual who will have contact with~~
19 ~~the client. The agency shall require background screening of~~
20 ~~the managing employee or other similarly titled individual who~~
21 ~~is responsible for the operation of the entity, and of the~~
22 ~~financial officer or other similarly titled individual who is~~
23 ~~responsible for the financial operation of the entity,~~
24 ~~including billings for client services in accordance with the~~
25 ~~level 2 standards for background screening as set forth in~~
26 ~~chapter 435.~~

27 ~~(b) The agency may require background screening of any~~
28 ~~other individual who is affiliated with the applicant if the~~
29 ~~agency has a reasonable basis for believing that he or she has~~
30 ~~been convicted of a crime or has committed any other offense~~
31

1 ~~prohibited under the level 2 standards for screening set forth~~
2 ~~in chapter 435.~~

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

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

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

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

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

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

30 ~~(h) The agency may deny or revoke the registration of~~
31 ~~any applicant who:~~

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

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

8 ~~(i) An application for licensure renewal must contain~~
9 ~~the information required under paragraphs (e) and (f).~~

10 (4)(5) Each registrant must obtain the employment or
11 contract history of persons who are employed by or under
12 contract with the organization and who will have contact at
13 any time with patients or clients in their homes by:

14 (a) Requiring such persons to submit an employment or
15 contractual history to the registrant; and

16 (b) Verifying the employment or contractual history,
17 unless through diligent efforts such verification is not
18 possible. The agency shall prescribe by rule the minimum
19 requirements for establishing that diligent efforts have been
20 made.

21
22 There is no monetary liability on the part of, and no cause of
23 action for damages arises against, a former employer of a
24 prospective employee of or prospective independent contractor
25 with a registrant who reasonably and in good faith
26 communicates his or her honest opinions about the former
27 employee's or contractor's job performance. This subsection
28 does not affect the official immunity of an officer or
29 employee of a public corporation.

30 ~~(6) On or before the first day on which services are~~
31 ~~provided to a patient or client, any registrant under this~~

1 ~~part must inform the patient or client and his or her~~
2 ~~immediate family, if appropriate, of the right to report~~
3 ~~abusive, neglectful, or exploitative practices. The statewide~~
4 ~~toll free telephone number for the central abuse hotline must~~
5 ~~be provided to patients or clients in a manner that is clearly~~
6 ~~legible and must include the words: "To report abuse, neglect,~~
7 ~~or exploitation, please call toll free ... (phone number)...."~~
8 ~~Registrants must establish appropriate policies and procedures~~
9 ~~for providing such notice to patients or clients.~~

10 ~~(7) The provisions of s. 400.512 regarding screening~~
11 ~~apply to any person or business entity registered under this~~
12 ~~section on or after October 1, 1994.~~

13 ~~(8) Upon verification that all requirements for~~
14 ~~registration have been met, the Agency for Health Care~~
15 ~~Administration shall issue a certificate of registration valid~~
16 ~~for no more than 1 year.~~

17 ~~(9) The Agency for Health Care Administration may~~
18 ~~deny, suspend, or revoke the registration of a person that:~~

19 ~~(a) Fails to comply with this section or applicable~~
20 ~~rules.~~

21 ~~(b) Commits an intentional, reckless, or negligent act~~
22 ~~that materially affects the health or safety of a person~~
23 ~~receiving services.~~

24 ~~(10) The Agency for Health Care Administration may~~
25 ~~institute injunctive proceedings under s. 400.515.~~

26 (5)~~(11)~~ A person that offers or advertises to the
27 public a service for which registration is required must
28 include in its advertisement the registration number issued by
29 the Agency for Health Care Administration.

30 ~~(12) It is unlawful for a person to offer or advertise~~
31 ~~to the public services, as defined by rule, without obtaining~~

1 ~~a certificate of registration from the Agency for Health Care~~
2 ~~Administration. It is unlawful for any holder of a~~
3 ~~certificate of registration to advertise or hold out to the~~
4 ~~public that he or she holds a certificate of registration for~~
5 ~~other than that for which he or she actually holds a~~
6 ~~certificate of registration. Any person who violates this~~
7 ~~subsection is subject to injunctive proceedings under s.~~
8 ~~400.515.~~

9 ~~(13) Any duly authorized officer or employee of the~~
10 ~~Agency for Health Care Administration has the right to make~~
11 ~~such inspections and investigations as are necessary in order~~
12 ~~to respond to complaints or to determine the state of~~
13 ~~compliance with this section and applicable rules.~~

14 ~~(a) If, in responding to a complaint, an officer or~~
15 ~~employee of the Agency for Health Care Administration has~~
16 ~~reason to believe that a crime has been committed, he or she~~
17 ~~shall notify the appropriate law enforcement agency.~~

18 ~~(b) If, in responding to a complaint, an officer or~~
19 ~~employee of the Agency for Health Care Administration has~~
20 ~~reason to believe that abuse, neglect, or exploitation has~~
21 ~~occurred, according to the definitions in chapter 415, he or~~
22 ~~she shall file a report under chapter 415.~~

23 ~~(6)(14)~~ In addition to any other penalties imposed
24 pursuant to this section or part, the agency may assess costs
25 related to an investigation that results in a successful
26 prosecution, excluding costs associated with an attorney's
27 time. If the agency imposes such an assessment and the
28 assessment is not paid, and if challenged is not the subject
29 of a pending appeal, prior to the renewal of the registration,
30 the registration shall not be issued until the assessment is
31 paid or arrangements for payment of the assessment are made.

1 ~~(7)(15)~~ The Agency for Health Care Administration
2 shall adopt rules to administer this section and part II of
3 chapter 408.

4 ~~(8)~~ Notwithstanding the penalties provided in s.
5 408.812(3), any registrant that provides personal care to a
6 client in the client's private residence commits a misdemeanor
7 of the first degree, punishable as provided in s. 775.082 or
8 s. 775.083, if the client's residence is not a facility
9 licensed in accordance with part II of chapter 408. Section
10 408.812 applies to all other unlicensed activity by a
11 registrant, including the offering or advertising of any
12 service that necessitates licensure under part II of chapter
13 408.

14 Section 117. Subsections (2) and (7) of section
15 400.512, Florida Statutes, are amended to read:

16 400.512 Screening of home health agency personnel;
17 nurse registry personnel; and companions and homemakers.--The
18 agency shall require employment or contractor screening as
19 provided in chapter 435, using the level 1 standards for
20 screening set forth in that chapter, for home health agency
21 personnel; persons referred for employment by nurse
22 registries; and persons employed by companion or homemaker
23 services registered under s. 400.509.

24 ~~(2) The administrator of each home health agency, the~~
25 ~~managing employee of each nurse registry, and the managing~~
26 ~~employee of each companion or homemaker service registered~~
27 ~~under s. 400.509 must sign an affidavit annually, under~~
28 ~~penalty of perjury, stating that all personnel hired,~~
29 ~~contracted with, or registered on or after October 1, 1994,~~
30 ~~who enter the home of a patient or client in their service~~
31 ~~capacity have been screened and that its remaining personnel~~

1 ~~have worked for the home health agency or registrant~~
2 ~~continuously since before October 1, 1994.~~

3 (7)(a) It is a misdemeanor of the first degree,
4 punishable under s. 775.082 or s. 775.083, for any person
5 willfully, knowingly, or intentionally to:

6 1. Fail, by false statement, misrepresentation,
7 impersonation, or other fraudulent means, to disclose in any
8 application for voluntary or paid employment a material fact
9 used in making a determination as to such person's
10 qualifications to be an employee under this section;

11 ~~2. Operate or attempt to operate an entity licensed or~~
12 ~~registered under this part with persons who do not meet the~~
13 ~~minimum standards for good moral character as contained in~~
14 ~~this section; or~~

15 ~~2.3.~~ Use information from the criminal records
16 obtained under this section for any purpose other than
17 screening that person for employment as specified in this
18 section or release such information to any other person for
19 any purpose other than screening for employment under this
20 section.

21 (b) It is a felony of the third degree, punishable
22 under s. 775.082, s. 775.083, or s. 775.084, for any person
23 willfully, knowingly, or intentionally to use information from
24 the juvenile records of a person obtained under this section
25 for any purpose other than screening for employment under this
26 section.

27 Section 118. Section 400.515, Florida Statutes, is
28 repealed.

29 Section 119. Subsections (6) and (7) of section
30 400.551, Florida Statutes, are amended to read:

31 400.551 Definitions.--As used in this part, the term:

1 (6) "Operator" means the licensee or person having
2 general administrative charge of an adult day care center.

3 (7) "Owner" means the licensee ~~owner~~ of an adult day
4 care center.

5 Section 120. Section 400.554, Florida Statutes, is
6 amended to read:

7 400.554 License requirement; fee; exemption;
8 display.--

9 (1) The requirements of part II of chapter 408 apply
10 to the provision of services that necessitate licensure
11 pursuant to this part and part II of chapter 408 and to
12 entities licensed by or applying for such licensure from the
13 Agency for Health Care Administration pursuant to this part.
14 However, an applicant for licensure is exempt from the
15 provisions of s. 408.810(10). It is unlawful to operate an
16 adult day care center without first obtaining from the agency
17 a license authorizing such operation. The agency is
18 responsible for licensing adult day care centers in accordance
19 with this part.

20 (2) Separate licenses are required for centers
21 operated on separate premises, even though operated under the
22 same management. Separate licenses are not required for
23 separate buildings on the same premises.

24 (3) In accordance with s. 408.805, an applicant or
25 licensee shall pay a fee for each license application
26 submitted under this part and part II of chapter 408. The
27 amount of the fee shall be established by rule and ~~The~~
28 ~~biennial license fee required of a center shall be determined~~
29 ~~by the department, but~~ may not exceed \$150 per biennium.

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1 (4) County-operated or municipally operated centers
2 applying for licensure under this part are exempt from the
3 payment of license fees.

4 ~~(5) The license for a center shall be displayed in a
5 conspicuous place inside the center.~~

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

12 Section 121. Section 400.555, Florida Statutes, is
13 amended to read:

14 400.555 Application for license.--

15 ~~(1) An application for a license to operate an adult
16 day care center must be made to the agency on forms furnished
17 by the agency and must be accompanied by the appropriate
18 license fee unless the applicant is exempt from payment of the
19 fee as provided in s. 400.554(4).~~

20 ~~(2) In addition to all provisions of part II of
21 chapter 408, the applicant for licensure must furnish+~~

22 ~~(a) a description of the physical and mental
23 capabilities and needs of the participants to be served and
24 the availability, frequency, and intensity of basic services
25 and of supportive and optional services to be provided and
26 proof of adequate liability insurance coverage.+~~

27 ~~(b) Satisfactory proof of financial ability to operate
28 and conduct the center in accordance with the requirements of
29 this part, which must include, in the case of an initial
30 application, a 1 year operating plan and proof of a 3 month
31 operating reserve fund; and~~

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~~(c) Proof of adequate liability insurance coverage.~~

~~(d) Proof of compliance with level 2 background screening as required under s. 400.5572.~~

~~(e) A description and explanation of any exclusions, permanent suspensions, or terminations of the application from the Medicare or Medicaid programs. Proof of compliance with disclosure of ownership and control interest requirements of the Medicare or Medicaid programs shall be accepted in lieu of this submission.~~

Section 122. Section 400.556, Florida Statutes, is amended to read:

400.556 Denial or, ~~suspension~~, revocation of license; emergency action; administrative fines; investigations and inspections.--

(1) The agency may deny or, revoke, ~~or suspend~~ a license under this part, impose an action under s. 408.814, or ~~may~~ impose an administrative fine against the owner of an adult day care center or its operator or employee in the manner provided in chapter 120 for a violation of any provision of this part, part II of chapter 408, or applicable rules.

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

(a) An intentional or negligent act materially affecting the health or safety of center participants.

~~(b) A violation of this part or of any standard or rule under this part.~~

~~(b)(c)~~ (b) A failure of persons subject to level 2 background screening under s. 400.4174(1) to meet the

1 screening standards of s. 435.04, or the retention by the
2 center of an employee subject to level 1 background screening
3 standards under s. 400.4174(2) who does not meet the screening
4 standards of s. 435.03 and for whom exemptions from
5 disqualification have not been provided by the agency.

6 ~~(c)(d)~~ Failure to follow the criteria and procedures
7 provided under part I of chapter 394 relating to the
8 transportation, voluntary admission, and involuntary
9 examination of center participants.

10 ~~(d)(e)~~ Multiple or repeated violations of this part or
11 of any standard or rule adopted under this part or part II of
12 chapter 408.

13 ~~(f) Exclusion, permanent suspension, or termination of~~
14 ~~the owner, if an individual, officer, or board member of the~~
15 ~~adult day care center, if the owner is a firm, corporation,~~
16 ~~partnership, or association, or any person owning 5 percent or~~
17 ~~more of the center, from the Medicare or Medicaid program.~~

18 (3) The agency is responsible for all investigations
19 and inspections conducted pursuant to this part.

20 Section 123. Section 400.5565, Florida Statutes, is
21 amended to read:

22 400.5565 Administrative fines; ~~interest.~~--

23 (1)(a) If the agency determines that an adult day care
24 center is not operated in compliance with this part, part II
25 of chapter 408, or applicable with rules adopted under this
26 ~~part~~, the agency, notwithstanding any other administrative
27 action it takes, shall make a reasonable attempt to discuss
28 with the owner each violation and recommended corrective
29 action prior to providing the owner with written notification.
30 The agency may request the submission of a corrective action
31 plan for the center which demonstrates a good faith effort to

1 remedy each violation by a specific date, subject to the
2 approval of the agency.

3 (b) The owner of a center or its operator or employee
4 found in violation of this part, part II of chapter 408, or
5 applicable ~~of rules adopted under this part~~ may be fined by
6 the agency. A fine may not exceed \$500 for each violation.
7 In no event, however, may such fines in the aggregate exceed
8 \$5,000.

9 (c) The failure to correct a violation by the date set
10 by the agency, or the failure to comply with an approved
11 corrective action plan, is a separate violation for each day
12 such failure continues, unless the agency approves an
13 extension to a specific date.

14 ~~(d) If the owner of a center or its operator or~~
15 ~~employee appeals an agency action under this section and the~~
16 ~~fine is upheld, the violator shall pay the fine, plus interest~~
17 ~~at the legal rate specified in s. 687.01 for each day that the~~
18 ~~fine remains unpaid after the date set by the agency for~~
19 ~~payment of the fine.~~

20 (2) In determining whether to impose a fine and in
21 fixing the amount of any fine, the agency shall consider the
22 following factors:

23 (a) The gravity of the violation, including the
24 probability that death or serious physical or emotional harm
25 to a participant will result or has resulted, the severity of
26 the actual or potential harm, and the extent to which the
27 provisions of the applicable statutes or rules were violated.

28 (b) Actions taken by the owner or operator to correct
29 violations.

30 (c) Any previous violations.

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1 (d) The financial benefit to the center of committing
2 or continuing the violation.

3 Section 124. Section 400.557, Florida Statutes, is
4 amended to read:

5 400.557 ~~Expiration of license; renewal;~~ Conditional
6 license or permit.--

7 ~~(1) A license issued for the operation of an adult day
8 care center, unless sooner suspended or revoked, expires 2
9 years after the date of issuance. The agency shall notify a
10 licensee at least 120 days before the expiration date that
11 license renewal is required to continue operation. The
12 notification must be provided electronically or by mail
13 delivery. At least 90 days prior to the expiration date, an
14 application for renewal must be submitted to the agency. A
15 license shall be renewed, upon the filing of an application on
16 forms furnished by the agency, if the applicant has first met
17 the requirements of this part and of the rules adopted under
18 this part. The applicant must file with the application
19 satisfactory proof of financial ability to operate the center
20 in accordance with the requirements of this part and in
21 accordance with the needs of the participants to be served and
22 an affidavit of compliance with the background screening
23 requirements of s. 400.5572.~~

24 ~~(2) A licensee against whom a revocation or suspension
25 proceeding is pending at the time for license renewal may be
26 issued a conditional license effective until final disposition
27 by the agency of the proceeding. If judicial relief is sought
28 from the final disposition, the court having jurisdiction may
29 issue a conditional permit effective for the duration of the
30 judicial proceeding.~~

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1 ~~(3)~~ The agency may issue a conditional license to an
2 applicant for license renewal or change of ownership if the
3 applicant fails to meet all standards and requirements for
4 licensure. A conditional license issued under this subsection
5 must be limited to a specific period not exceeding 6 months,
6 as determined by the agency, and must be accompanied by an
7 approved plan of correction.

8 Section 125. Section 400.5572, Florida Statutes, is
9 amended to read:

10 400.5572 Background screening.--

11 ~~(1)(a) Level 2 background screening must be conducted~~
12 ~~on each of the following persons, who shall be considered~~
13 ~~employees for the purposes of conducting screening under~~
14 ~~chapter 435:~~

15 ~~1. The adult day care center owner if an individual,~~
16 ~~the operator, and the financial officer.~~

17 ~~2. An officer or board member if the owner of the~~
18 ~~adult day care center is a firm, corporation, partnership, or~~
19 ~~association, or any person owning 5 percent or more of the~~
20 ~~facility, if the agency has probable cause to believe that~~
21 ~~such person has been convicted of any offense prohibited by s.~~
22 ~~435.04. For each officer, board member, or person owning 5~~
23 ~~percent or more who has been convicted of any such offense,~~
24 ~~the facility shall submit to the agency a description and~~
25 ~~explanation of the conviction at the time of license~~
26 ~~application. This subparagraph does not apply to a board~~
27 ~~member of a not for profit corporation or organization if the~~
28 ~~board member serves solely in a voluntary capacity, does not~~
29 ~~regularly take part in the day to day operational decisions of~~
30 ~~the corporation or organization, receives no remuneration for~~
31 ~~his or her services, and has no financial interest and has no~~

1 ~~family members with a financial interest in the corporation or~~
2 ~~organization, provided that the board member and facility~~
3 ~~submit a statement affirming that the board member's~~
4 ~~relationship to the facility satisfies the requirements of~~
5 ~~this subparagraph.~~

6 ~~(b) Proof of compliance with level 2 screening~~
7 ~~standards which has been submitted within the previous 5 years~~
8 ~~to meet any facility or professional licensure requirements of~~
9 ~~the agency or the Department of Health satisfies the~~
10 ~~requirements of this subsection.~~

11 ~~(c) The agency may grant a provisional license to an~~
12 ~~adult day care center applying for an initial license when~~
13 ~~each individual required by this subsection to undergo~~
14 ~~screening has completed the Department of Law Enforcement~~
15 ~~background check, but has not yet received results from the~~
16 ~~Federal Bureau of Investigation, or when a request for an~~
17 ~~exemption from disqualification has been submitted to the~~
18 ~~agency pursuant to s. 435.07, but a response has not been~~
19 ~~issued.~~

20 ~~(2)~~ The owner or administrator of an adult day care
21 center must conduct level 1 background screening as set forth
22 in chapter 435 on all employees hired on or after October 1,
23 1998, who provide basic services or supportive and optional
24 services to the participants. Such persons satisfy this
25 requirement if:

26 (1)(a) Proof of compliance with level 1 screening
27 requirements obtained to meet any professional license
28 requirements in this state is provided and accompanied, under
29 penalty of perjury, by a copy of the person's current
30 professional license and an affidavit of current compliance
31 with the background screening requirements.

1 ~~(2)(b)~~ The person required to be screened has been
2 continuously employed, without a breach in service that
3 exceeds 180 days, in the same type of occupation for which the
4 person is seeking employment and provides proof of compliance
5 with the level 1 screening requirement which is no more than 2
6 years old. Proof of compliance must 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 to the person screened by the employer retaining
10 documentation of the screening.

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 126. Sections 400.5575 and 400.558, Florida
18 Statutes, are repealed.

19 Section 127. Section 400.559, Florida Statutes, is
20 amended to read:

21 400.559 Closing ~~or change of owner or operator~~ of
22 center.--

23 ~~(1)~~ Before operation of an adult day care center may
24 be voluntarily discontinued, the operator must ~~inform the~~
25 ~~agency in writing~~ at least 60 days prior to the discontinuance
26 of operation. ~~The operator must also, at such time,~~ inform
27 each participant of the fact and the proposed date of such
28 discontinuance.

29 ~~(2)~~ ~~Immediately upon discontinuance of the operation~~
30 ~~of a center, the owner or operator shall surrender the license~~
31

1 ~~for the center to the agency, and the license shall be~~
2 ~~canceled by the agency.~~

3 ~~(3) If a center has a change of ownership, the new~~
4 ~~owner shall apply to the agency for a new license at least 60~~
5 ~~days before the date of the change of ownership.~~

6 ~~(4) If a center has a change of operator, the new~~
7 ~~operator shall notify the agency in writing within 30 days~~
8 ~~after the change of operator.~~

9 Section 128. Section 400.56, Florida Statutes, is
10 amended to read:

11 400.56 Right of entry and inspection.--In accordance
12 with s. 408.811, Any duly designated officer or employee of
13 the agency or department has the right to enter the premises
14 of any adult day care center licensed pursuant to this part,
15 at any reasonable time, in order to determine the state of
16 compliance with this part, part II of chapter 408, and
17 applicable the rules or standards in force pursuant to this
18 part. ~~The right of entry and inspection also extends to any~~
19 ~~premises that the agency has reason to believe are being~~
20 ~~operated as a center without a license, but no entry or~~
21 ~~inspection of any unlicensed premises may be made without the~~
22 ~~permission of the owner or operator unless a warrant is first~~
23 ~~obtained from the circuit court authorizing entry or~~
24 ~~inspection. Any application for a center license or license~~
25 ~~renewal made pursuant to this part constitutes permission for,~~
26 ~~and complete acquiescence in, any entry or inspection of the~~
27 ~~premises for which the license is sought in order to~~
28 ~~facilitate verification of the information submitted on or in~~
29 ~~connection with the application.~~

30 Section 129. Section 400.562, Florida Statutes, is
31 amended to read:

1 400.562 Rules establishing standards.--

2 (1) The agency ~~Department of Elderly Affairs~~, in
3 conjunction with the Department of Elderly Affairs ~~agency~~,
4 shall adopt rules to implement the provisions of this part and
5 part II of chapter 408. The rules must include reasonable and
6 fair standards. Any conflict between these standards and those
7 that may be set forth in local, county, or municipal
8 ordinances shall be resolved in favor of those having
9 statewide effect. Such standards must relate to:

10 (a) The maintenance of adult day care centers with
11 respect to plumbing, heating, lighting, ventilation, and other
12 building conditions, including adequate meeting space, to
13 ensure the health, safety, and comfort of participants and
14 protection from fire hazard. Such standards may not conflict
15 with chapter 553 and must be based upon the size of the
16 structure and the number of participants.

17 (b) The number and qualifications of all personnel
18 employed by adult day care centers who have responsibilities
19 for the care of participants.

20 (c) All sanitary conditions within adult day care
21 centers and their surroundings, including water supply, sewage
22 disposal, food handling, and general hygiene, and maintenance
23 of sanitary conditions, to ensure the health and comfort of
24 participants.

25 (d) Basic services provided by adult day care centers.

26 (e) Supportive and optional services provided by adult
27 day care centers.

28 (f) Data and information relative to participants and
29 programs of adult day care centers, including, but not limited
30 to, the physical and mental capabilities and needs of the
31 participants, the availability, frequency, and intensity of

1 basic services and of supportive and optional services
2 provided, the frequency of participation, the distances
3 traveled by participants, the hours of operation, the number
4 of referrals to other centers or elsewhere, and the incidence
5 of illness.

6 (g) Components of a comprehensive emergency management
7 plan, developed in consultation with the Department of Health,
8 the Department of Elderly Affairs ~~Agency for Health Care~~
9 ~~Administration~~, and the Department of Community Affairs.

10 ~~(2) Pursuant to s. 119.07, the agency may charge a fee~~
11 ~~for furnishing a copy of this part, or of the rules adopted~~
12 ~~under this part, to any person upon request for the copy.~~

13 ~~(2)(3)~~ Pursuant to this part, s. 408.811, and
14 applicable rules ~~adopted by the department~~, the agency may
15 conduct an abbreviated biennial inspection of key
16 quality-of-care standards, in lieu of a full inspection, of a
17 center that has a record of good performance. However, the
18 agency must conduct a full inspection of a center that has had
19 one or more confirmed complaints within the licensure period
20 immediately preceding the inspection or which has a serious
21 problem identified during the abbreviated inspection. The
22 agency shall by rule develop the key quality-of-care
23 standards, taking into consideration the comments and
24 recommendations of the Department of Elderly Affairs and of
25 provider groups. ~~These standards shall be included in rules~~
26 ~~adopted by the Department of Elderly Affairs.~~

27 Section 130. Section 400.564, Florida Statutes, is
28 repealed.

29 Section 131. Section 400.602, Florida Statutes, is
30 amended to read:

31

1 400.602 Licensure required; prohibited acts;
2 exemptions; ~~display~~, transferability of license.--

3 (1)~~(a)~~ The requirements of part II of chapter 408
4 apply to the provision of services that necessitate licensure
5 pursuant to this part and part II of chapter 408 and to
6 entities licensed by or applying for such licensure from the
7 Agency for Health Care Administration pursuant to this part.
8 ~~It is unlawful to operate or maintain a hospice without first~~
9 ~~obtaining a license from the agency.~~

10 ~~(b)~~ ~~It is unlawful for~~ Any person or legal entity not
11 licensed as a hospice under this part may not ~~to~~ use the word
12 "hospice" in its name, or ~~to~~ offer or advertise hospice
13 services or hospice-like services in such a way as to mislead
14 a person to believe that the offeror is a hospice licensed
15 under this part.

16 (2) Services provided by a hospital, nursing home, or
17 other health care facility, health care provider, or
18 caregiver, or under the Community Care for the Elderly Act, do
19 not constitute a hospice unless the facility, provider, or
20 caregiver establishes a separate and distinct administrative
21 program to provide home, residential, and homelike inpatient
22 hospice services.

23 (3)(a) A separately licensed hospice may not use a
24 name which is substantially the same as the name of another
25 hospice licensed under this part.

26 (b) A licensed hospice which intends to change its
27 name or address must notify the agency at least 60 days before
28 making the change.

29 ~~(4) The license shall be displayed in a conspicuous~~
30 ~~place inside the hospice program office; shall be valid only~~
31 ~~in the possession of the person or public agency to which it~~

1 ~~is issued; shall not be subject to sale, assignment, or other~~
2 ~~transfer, voluntary or involuntary; and shall not be valid for~~
3 ~~any hospice other than the hospice for which originally~~
4 ~~issued.~~

5 ~~(4)(5)~~ Notwithstanding s. 400.601(3), any hospice
6 operating in corporate form exclusively as a hospice,
7 incorporated on or before July 1, 1978, may be transferred to
8 a for-profit or not-for-profit entity, and may transfer the
9 license to that entity.

10 ~~(5)(6)~~ Notwithstanding s. 400.601(3), at any time
11 after July 1, 1995, any entity entitled to licensure under
12 subsection~~(4)(5)~~ may obtain a license for up to two
13 additional hospices in accordance with the other requirements
14 of this part and upon receipt of any certificate of need that
15 may be required under the provisions of ss. 408.031-408.045.

16 Section 132. Section 400.605, Florida Statutes, is
17 amended to read:

18 400.605 Administration; forms; fees; rules;
19 inspections; fines.--

20 (1) The agency department, in consultation with the
21 department agency, shall by rule establish minimum standards
22 and procedures for a hospice pursuant to this part and part II
23 of chapter 408. The rules must include:

24 ~~(a) License application procedures and requirements.~~

25 ~~(a)(b)~~ The qualifications of professional and
26 ancillary personnel to ensure the provision of appropriate and
27 adequate hospice care.

28 ~~(b)(c)~~ Standards and procedures for the administrative
29 management of a hospice.

30 ~~(c)(d)~~ Standards for hospice services that ensure the
31 provision of quality patient care.

1 ~~(d)(e)~~ Components of a patient plan of care.

2 ~~(e)(f)~~ Procedures relating to the implementation of
3 advanced directives and do-not-resuscitate orders.

4 ~~(f)(g)~~ Procedures for maintaining and ensuring
5 confidentiality of patient records.

6 ~~(g)(h)~~ Standards for hospice care provided in
7 freestanding inpatient facilities that are not otherwise
8 licensed medical facilities and in residential care facilities
9 such as nursing homes, assisted living facilities, adult
10 family care homes, and hospice residential units and
11 facilities.

12 ~~(h)(i)~~ Physical plant standards for hospice
13 residential and inpatient facilities and units.

14 ~~(i)(j)~~ Components of a comprehensive emergency
15 management plan, developed in consultation with the Department
16 of Health, the Department of Elderly Affairs, and the
17 Department of Community Affairs.

18 ~~(j)(k)~~ Standards and procedures relating to the
19 establishment and activities of a quality assurance and
20 utilization review committee.

21 ~~(k)(l)~~ Components and procedures relating to the
22 collection of patient demographic data and other information
23 on the provision of hospice care in this state.

24 (2) In accordance with s. 408.805, an applicant or
25 licensee shall pay a fee for each license application
26 submitted under this part and part II of chapter 408. The
27 amount of the fee shall be established by rule and may not
28 exceed \$1,200 per biennium. The agency shall:

29 ~~(a) Prepare and furnish all forms necessary under the~~
30 ~~provisions of this part in relation to applications for~~
31 ~~licensure or licensure renewals.~~

1 ~~(b) Collect from the applicant at the time of filing~~
2 ~~an application for a license or at the time of renewal of a~~
3 ~~license a fee which must be reasonably calculated to cover the~~
4 ~~cost of regulation under this part, but may not exceed \$600~~
5 ~~per program. All fees collected under this part shall be~~
6 ~~deposited in the Health Care Trust Fund for the administration~~
7 ~~of this part.~~

8 ~~(c) Issue hospice licenses to all applicants which~~
9 ~~meet the provisions of this part and applicable rules.~~

10 ~~(3)(d)~~ In accordance with s. 408.811, the agency shall
11 conduct annual licensure inspections of all licensees, except
12 that licensure inspections may be conducted biennially for
13 hospices having a 3-year record of substantial compliance. The
14 agency shall

15 ~~(e)~~ conduct such inspections and investigations as are
16 necessary in order to determine the state of compliance with
17 the provisions of this part, part II of chapter 408, and
18 applicable adopted rules. ~~The right of inspection also~~
19 ~~extends to any program that the agency has reason to believe~~
20 ~~is offering or advertising itself as a hospice without a~~
21 ~~license, but no inspection may be made without the permission~~
22 ~~of the owner or person in charge thereof unless a warrant is~~
23 ~~first obtained from a circuit court authorizing such~~
24 ~~inspection. An application for a license or license renewal~~
25 ~~made pursuant to this part constitutes permission for an~~
26 ~~inspection of the hospice for which the license is sought in~~
27 ~~order to facilitate verification of the information submitted~~
28 ~~on or in connection with the application.~~

29 ~~(4)(f)~~ In accordance with part II of chapter 408, the
30 agency may impose an administrative fine for any violation of

31

1 the provisions of this part, part II of chapter 408, or
2 applicable rules.

3 Section 133. Section 400.606, Florida Statutes, is
4 amended to read:

5 400.606 License; application; renewal; conditional
6 license or permit; certificate of need.--

7 (1) ~~A license application must be filed on a form~~
8 ~~provided by the agency and must be accompanied by the~~
9 ~~appropriate license fee as well as satisfactory proof that the~~
10 ~~hospice is in compliance with this part and any rules adopted~~
11 ~~by the department and proof of financial ability to operate~~
12 ~~and conduct the hospice in accordance with the requirements of~~
13 ~~this part.~~ The initial application and change-of-ownership

14 application must be accompanied by a plan for the delivery of
15 home, residential, and homelike inpatient hospice services to
16 terminally ill persons and their families. Such plan must
17 contain, but need not be limited to:

18 (a) The estimated average number of terminally ill
19 persons to be served monthly.

20 (b) The geographic area in which hospice services will
21 be available.

22 (c) A listing of services which are or will be
23 provided, either directly by the applicant or through
24 contractual arrangements with existing providers.

25 (d) Provisions for the implementation of hospice home
26 care within 3 months after licensure.

27 (e) Provisions for the implementation of hospice
28 homelike inpatient care within 12 months after licensure.

29 (f) The number and disciplines of professional staff
30 to be employed.

31

1 (g) The name and qualifications of any existing or
2 potential contractee.

3 (h) A plan for attracting and training volunteers.

4 (i) The projected annual operating cost of the
5 hospice.

6 ~~(j) A statement of financial resources and personnel
7 available to the applicant to deliver hospice care.~~

8
9 If the applicant is licensed to operate an existing health
10 care provider, the application must be accompanied by a copy
11 of the most recent profit-loss statement and, if applicable,
12 the most recent licensure inspection report.

13 ~~(2) Each applicant must submit to the agency with its
14 application a description and explanation of any exclusions,
15 permanent suspensions, or terminations from the Medicaid or
16 Medicare programs of the owner, if an individual; of any
17 officer or board member of the hospice, if the owner is a
18 firm, corporation, partnership, or association; or of any
19 person owning 5 percent or more of the hospice. Proof of
20 compliance with disclosure of ownership and control interest
21 requirements of the Medicaid or Medicare programs may be
22 accepted in lieu of this submission.~~

23 ~~(2)(3) A license issued for the operation of a
24 hospice, unless sooner suspended or revoked, shall expire
25 automatically 1 year from the date of issuance. Sixty days
26 prior to the expiration date, a hospice wishing to renew its
27 license shall submit an application for renewal to the agency
28 on forms furnished by the agency. The agency shall renew the
29 license if the applicant has first met the requirements
30 established under this part and all applicable rules and has
31 provided the information described under this section in~~

1 ~~addition to the application. However,~~ The application for
2 license renewal shall be accompanied by an update of the plan
3 for delivery of hospice care only if information contained in
4 the plan submitted pursuant to subsection (1) is no longer
5 applicable.

6 ~~(4) A hospice against which a revocation or suspension~~
7 ~~proceeding is pending at the time of license renewal may be~~
8 ~~issued a conditional license by the agency effective until~~
9 ~~final disposition of such proceeding. If judicial relief is~~
10 ~~sought from the final agency action, the court having~~
11 ~~jurisdiction may issue a conditional permit for the duration~~
12 ~~of the judicial proceeding.~~

13 ~~(3)(5)~~ The agency shall not issue a license to a
14 hospice that fails to receive a certificate of need under the
15 provisions of ss. 408.031-408.045. A licensed hospice is a
16 health care facility as that term is used in s. 408.039(5) and
17 is entitled to initiate or intervene in an administrative
18 hearing.

19 ~~(4)(6)~~ A freestanding hospice facility that is
20 primarily engaged in providing inpatient and related services
21 and that is not otherwise licensed as a health care facility
22 shall be required to obtain a certificate of need. However, a
23 freestanding hospice facility with six or fewer beds shall not
24 be required to comply with institutional standards such as,
25 but not limited to, standards requiring sprinkler systems,
26 emergency electrical systems, or special lavatory devices.

27 Section 134. Section 400.6065, Florida Statutes, is
28 amended to read:

29 400.6065 Background screening.--

30 ~~(1) Upon receipt of a completed application under s.~~
31 ~~400.606, the agency shall require level 2 background screening~~

1 ~~on each of the following persons, who shall be considered~~
2 ~~employees for the purposes of conducting screening under~~
3 ~~chapter 435:~~

4 ~~(a) The hospice administrator and financial officer.~~

5 ~~(b) An officer or board member if the hospice is a~~
6 ~~firm, corporation, partnership, or association, or any person~~
7 ~~owning 5 percent or more of the hospice if the agency has~~
8 ~~probable cause to believe that such officer, board member, or~~
9 ~~owner has been convicted of any offense prohibited by s.~~
10 ~~435.04. For each officer, board member, or person owning 5~~
11 ~~percent or more who has been convicted of any such offense,~~
12 ~~the hospice shall submit to the agency a description and~~
13 ~~explanation of the conviction at the time of license~~
14 ~~application. This paragraph does not apply to a board member~~
15 ~~of a not for profit corporation or organization if the board~~
16 ~~member serves solely in a voluntary capacity, does not~~
17 ~~regularly take part in the day to day operational decisions of~~
18 ~~the corporation or organization, receives no remuneration for~~
19 ~~his or her services, and has no financial interest and has no~~
20 ~~family members with a financial interest in the corporation or~~
21 ~~organization, provided that the board member and the~~
22 ~~corporation or organization submit a statement affirming that~~
23 ~~the board member's relationship to the corporation or~~
24 ~~organization satisfies the requirements of this paragraph.~~

25 ~~(2) Proof of compliance with level 2 screening~~
26 ~~standards which has been submitted within the previous 5 years~~
27 ~~to meet any facility or professional licensure requirements of~~
28 ~~the agency or the Department of Health satisfies the~~
29 ~~requirements of this section.~~

30 ~~(3) The agency may grant a provisional license to a~~
31 ~~hospice applying for an initial license when each individual~~

1 ~~required by this section to undergo screening has completed~~
2 ~~the Department of Law Enforcement background check, but has~~
3 ~~not yet received results from the Federal Bureau of~~
4 ~~Investigation.~~

5 (1)~~(4)~~ The agency shall require employment or
6 contractor screening as provided in chapter 435, using the
7 level 1 standards for screening set forth in that chapter, for
8 hospice personnel.

9 (2)~~(5)~~ The agency may grant exemptions from
10 disqualification from employment under this section as
11 provided in s. 435.07.

12 ~~(6) The administration of each hospice must sign an~~
13 ~~affidavit annually, under penalty of perjury, stating that all~~
14 ~~personnel employed or contracted with on or after October 1,~~
15 ~~1998, who provide hospice services in a facility, or who enter~~
16 ~~the home of a patient in their service capacity, have been~~
17 ~~screened.~~

18 (3)~~(7)~~ Proof of compliance with the screening
19 requirements of chapter 435 shall be accepted in lieu of the
20 requirements of this section if the person has been
21 continuously employed or registered without a breach in
22 service that exceeds 180 days, the proof of compliance is not
23 more than 2 years old, and the person has been screened, at
24 the discretion of the hospice.

25 (4)~~(8)~~(a) It is a misdemeanor of the first degree,
26 punishable under s. 775.082 or s. 775.083, for any person
27 willfully, knowingly, or intentionally to:

28 1. Fail, by false statement, misrepresentation,
29 impersonation, or other fraudulent means, to disclose in any
30 application for voluntary or paid employment a material fact
31 used in making a determination as to such person's

1 qualifications to be employed or contracted with under this
2 section;

3 ~~2. Operate or attempt to operate an entity licensed~~
4 ~~under this part with persons who do not meet the minimum~~
5 ~~standards for good moral character as contained in this~~
6 ~~section;~~ or

7 ~~2.3.~~ Use information from the criminal records
8 obtained under this section for any purpose other than
9 screening as specified in this section, or release such
10 information to any other person for any purpose other than
11 screening under this section.

12 (b) It is a felony of the third degree, punishable
13 under s. 775.082, s. 775.083, or s. 775.084, for any person
14 willfully, knowingly, or intentionally to use information from
15 the juvenile records of a person obtained under this section
16 for any purpose other than screening for employment under this
17 section.

18 Section 135. Section 400.607, Florida Statutes, is
19 amended to read:

20 400.607 Denial, ~~suspension,~~ or revocation of license;
21 imposition of administrative fine; grounds; injunctions.--

22 (1) The agency may deny or, revoke, ~~or suspend~~ a
23 license, impose a moratorium, or impose an administrative
24 fine, which may not exceed \$5,000 per violation, for the
25 violation of any provision of this part, part II of chapter
26 408, or applicable rules in the manner provided in chapter
27 120.

28 (2) Any of the following actions by a licensed hospice
29 or any of its employees shall be grounds for action by the
30 agency against a hospice:

31

1 (a) A violation of the provisions of this part or
2 applicable rules.

3 (b) An intentional or negligent act materially
4 affecting the health or safety of a patient.

5 ~~(3) The agency may deny or revoke a license upon a~~
6 ~~determination that:~~

7 ~~(a) Persons subject to level 2 background screening~~
8 ~~under s. 400.6065 do not meet the screening standards of s.~~
9 ~~435.04, and exemptions from disqualification have not been~~
10 ~~provided by the agency.~~

11 ~~(b) An officer, board member, or person owning 5~~
12 ~~percent or more of the hospice has been excluded, permanently~~
13 ~~suspended, or terminated from the Medicare or Medicaid~~
14 ~~programs.~~

15 (3)(4) If, 3 months after the date of obtaining a
16 license, or at any time thereafter, a hospice does not have in
17 operation the home-care component of hospice care, the agency
18 shall immediately revoke the license of such hospice.

19 (4)(5) If, 12 months after the date of obtaining a
20 license pursuant to s. 400.606, or at any time thereafter, a
21 hospice does not have in operation the inpatient components of
22 hospice care, the agency shall immediately revoke the license
23 of such hospice.

24 ~~(6) The agency may institute a civil action in a court~~
25 ~~of competent jurisdiction to seek injunctive relief to enforce~~
26 ~~compliance with this part or any rule adopted pursuant to this~~
27 ~~part.~~

28 (5)(7) The remedies set forth in this section are
29 independent of and cumulative to other remedies provided by
30 law.
31

1 Section 136. Subsection (8) of section 400.6095,
2 Florida Statutes, is amended to read:

3 400.6095 Patient admission; assessment; plan of care;
4 discharge; death.--

5 (8) The hospice care team may withhold or withdraw
6 cardiopulmonary resuscitation if presented with an order not
7 to resuscitate executed pursuant to s. 401.45. The agency
8 ~~department~~ shall adopt rules providing for the implementation
9 of such orders. Hospice staff shall not be subject to criminal
10 prosecution or civil liability, nor be considered to have
11 engaged in negligent or unprofessional conduct, for
12 withholding or withdrawing cardiopulmonary resuscitation
13 pursuant to such an order and applicable rules ~~adopted by the~~
14 ~~department~~. The absence of an order to resuscitate executed
15 pursuant to s. 401.45 does not preclude a physician from
16 withholding or withdrawing cardiopulmonary resuscitation as
17 otherwise permitted by law.

18 Section 137. Subsection (5) of section 400.617,
19 Florida Statutes, is amended to read:

20 400.617 Legislative intent; purpose.--

21 (5) Rules of the agency ~~department~~ relating to adult
22 family-care homes shall be as minimal and flexible as possible
23 to ensure the protection of residents while minimizing the
24 obstacles that could inhibit the establishment of adult
25 family-care homes.

26 Section 138. Section 400.619, Florida Statutes, is
27 amended to read:

28 400.619 Licensure ~~application and renewal~~.--

29 (1) The requirements of part II of chapter 408 apply
30 to the provision of services that necessitate licensure
31 pursuant to this part and part II of chapter 408 and to

1 entities licensed by or applying for such licensure from the
2 Agency for Health Care Administration pursuant to this part.

3 However, an applicant for licensure is exempt from the
4 provisions of s. 408.810(7), (8), (9), and (10). Each person
5 who intends to be an adult family care home provider must
6 apply for a license from the agency at least 90 days before
7 the applicant intends to operate the adult family care home.

8 (2) A person who intends to be an adult family-care
9 home provider must own or rent the adult family-care home that
10 is to be licensed and reside therein.

11 (3) In accordance with s. 408.805, an applicant or
12 licensee shall pay a fee for each license application
13 submitted under this part and part II of chapter 408. The
14 amount of the fee shall be \$200 per biennium. The agency shall
15 notify a licensee at least 120 days before the expiration date
16 that license renewal is required to continue operation. The
17 notification must be provided electronically or by mail
18 delivery. Application for a license or annual license renewal
19 must be made on a form provided by the agency, signed under
20 oath, and must be accompanied by a licensing fee of \$100 per
21 year.

22 (4) Upon receipt of a completed license application or
23 license renewal, and the fee, the agency shall initiate a
24 level 1 background screening as provided under chapter 435 on
25 the adult family-care home provider, the designated relief
26 person, all adult household members, and all staff members.
27 The applicant or licensee is responsible for paying the fees
28 associated with obtaining the required screening. The agency
29 shall conduct an onsite visit to the home that is to be
30 licensed.

31

1 (a) Proof of compliance with level 1 screening
2 standards which has been submitted within the previous 5 years
3 to meet any facility or professional licensure requirements of
4 the agency or the Department of Health satisfies the
5 requirements of this subsection. Such proof must be
6 accompanied, under penalty of perjury, by a copy of the
7 person's current professional license and an affidavit of
8 current compliance with the background screening requirements.

9 (b) The person required to be screened must have been
10 continuously employed in the same type of occupation for which
11 the person is seeking employment without a breach in service
12 that exceeds 180 days, and proof of compliance with the level
13 1 screening requirement which is no more than 2 years old must
14 be provided. Proof of compliance shall be provided directly
15 from one employer or contractor to another, and not from the
16 person screened. Upon request, a copy of screening results
17 shall be provided to the person screened by the employer
18 retaining documentation of the screening.

19 ~~(5) The application must be accompanied by a~~
20 ~~description and explanation of any exclusions, permanent~~
21 ~~suspensions, or terminations of the applicant from~~
22 ~~participation in the Medicaid or Medicare programs or any~~
23 ~~other governmental health care or health insurance program.~~

24 (5)(6) Unless the adult family-care home is a
25 community residential home subject to chapter 419, the
26 applicant must provide documentation, signed by the
27 appropriate governmental official, that the home has met local
28 zoning requirements for the location for which the license is
29 sought.

30 (6)(7) Access to a licensed adult family-care home
31 must be provided at reasonable times for the appropriate

1 officials of the department, the Department of Health, the
2 Department of Children and Family Services, the agency, and
3 the State Fire Marshal, who are responsible for the
4 development and maintenance of fire, health, sanitary, and
5 safety standards, to inspect the facility to assure compliance
6 with these standards. In addition, access to a licensed adult
7 family-care home must be provided at reasonable times for the
8 local long-term care ombudsman council.

9 ~~(8) A license is effective for 1 year after the date~~
10 ~~of issuance unless revoked sooner. Each license must state~~
11 ~~the name of the provider, the address of the home to which the~~
12 ~~license applies, and the maximum number of residents of the~~
13 ~~home. Failure to timely file a license renewal application~~
14 ~~shall result in a late fee equal to 50 percent of the license~~
15 ~~fee.~~

16 ~~(9) A license is not transferable or applicable to any~~
17 ~~location or person other than the location and person~~
18 ~~indicated on the license.~~

19 ~~(7)(10)~~ The licensed maximum capacity of each adult
20 family-care home is based on the service needs of the
21 residents and the capability of the provider to meet the needs
22 of the residents. Any relative who lives in the adult
23 family-care home and who is a disabled adult or frail elder
24 must be included in that limitation.

25 ~~(8)(11)~~ Each adult family-care home must designate at
26 least one licensed space for a resident receiving optional
27 state supplementation. The Department of Children and Family
28 Services shall specify by rule the procedures to be followed
29 for referring residents who receive optional state
30 supplementation to adult family-care homes. Those homes
31 licensed as adult foster homes or assisted living facilities

1 prior to January 1, 1994, that convert to adult family-care
2 homes, are exempt from this requirement.

3 ~~(9)(12)~~ The agency may issue a conditional license to
4 a provider for the purpose of bringing the adult family-care
5 home into compliance with licensure requirements. A
6 conditional license must be limited to a specific period, not
7 exceeding 6 months. The agency ~~department~~ shall, by rule,
8 establish criteria for issuing conditional licenses.

9 ~~(13) All moneys collected under this section must be~~
10 ~~deposited into the Department of Elderly Affairs~~
11 ~~Administrative Trust Fund and used to offset the expenses of~~
12 ~~departmental training and education for adult family care home~~
13 ~~providers.~~

14 ~~(10)(14)~~ The agency ~~department~~ may adopt rules to
15 establish procedures, identify forms, specify documentation,
16 and clarify terms, as necessary, to administer this section
17 and part II of chapter 408.

18 Section 139. Section 400.6194, Florida Statutes, is
19 amended to read:

20 400.6194 Denial or, revocation, ~~or suspension~~ of a
21 license.--In addition to the requirements of part II of
22 chapter 408, the agency may deny, ~~suspend,~~ or revoke a license
23 for any of the following reasons:

24 (1) Failure of any of the persons required to undergo
25 background screening under s. 400.619 to meet the level 1
26 screening standards of s. 435.03, unless an exemption from
27 disqualification has been provided by the agency.

28 ~~(2) An intentional or negligent act materially~~
29 ~~affecting the health, safety, or welfare of the adult~~
30 ~~family care home residents.~~

31

1 ~~(3) Submission of fraudulent information or omission~~
2 ~~of any material fact on a license application or any other~~
3 ~~document required by the agency.~~

4 ~~(4) Failure to pay an administrative fine assessed~~
5 ~~under this part.~~

6 ~~(5) A violation of this part or adopted rules which~~
7 ~~results in conditions or practices that directly threaten the~~
8 ~~physical or emotional health, safety, or welfare of residents.~~

9 ~~(2)(6)~~ Failure to correct cited fire code violations
10 that threaten the health, safety, or welfare of residents.

11 ~~(7) Failure to submit a completed initial license~~
12 ~~application or to complete an application for license renewal~~
13 ~~within the specified timeframes.~~

14 ~~(8) Exclusion, permanent suspension, or termination of~~
15 ~~the provider from the Medicare or Medicaid program.~~

16 Section 140. Section 400.6196, Florida Statutes, is
17 amended to read:

18 400.6196 Classification of deficiencies;
19 administrative fines ~~Violations; penalties.--~~

20 (1) In accordance with part II of chapter 408, and in
21 addition to any other liability or penalty provided by law,
22 the agency may impose an administrative fine against a civil
23 penalty on a provider according to the following
24 classification for a violation of any provision of this part,
25 part II of chapter 408, or applicable rules:

26 (a) Class I violations are those conditions or
27 practices related to the operation and maintenance of an adult
28 family-care home or to the care of residents which the agency
29 determines present an imminent danger to the residents or
30 guests of the facility or a substantial probability that death
31 or serious physical or emotional harm would result therefrom.

1 The condition or practice that constitutes a class I violation
2 must be abated or eliminated within 24 hours, unless a fixed
3 period, as determined by the agency, is required for
4 correction. A class I deficiency is subject to an
5 administrative fine in an amount not less than \$500 and not
6 exceeding \$1,000 for each violation. A fine may be levied
7 notwithstanding the correction of the deficiency.

8 (b) Class II violations are those conditions or
9 practices related to the operation and maintenance of an adult
10 family-care home or to the care of residents which the agency
11 determines directly threaten the physical or emotional health,
12 safety, or security of the residents, other than class I
13 violations. A class II violation is subject to an
14 administrative fine in an amount not less than \$250 and not
15 exceeding \$500 for each violation. A citation for a class II
16 violation must specify the time within which the violation is
17 required to be corrected. If a class II violation is corrected
18 within the time specified, no civil penalty shall be imposed,
19 unless it is a repeated offense.

20 (c) Class III violations are those conditions or
21 practices related to the operation and maintenance of an adult
22 family-care home or to the care of residents which the agency
23 determines indirectly or potentially threaten the physical or
24 emotional health, safety, or security of residents, other than
25 class I or class II violations. A class III violation is
26 subject to an administrative fine in an amount not less than
27 \$100 and not exceeding \$250 for each violation. A citation for
28 a class III violation shall specify the time within which the
29 violation is required to be corrected. If a class III
30 violation is corrected within the time specified, no civil
31 penalty shall be imposed, unless it is a repeated offense.

1 (d) Class IV violations are those conditions or
2 occurrences related to the operation and maintenance of an
3 adult family-care home, or related to the required reports,
4 forms, or documents, which do not have the potential of
5 negatively affecting the residents. A provider that does not
6 correct a class IV violation within the time limit specified
7 by the agency is subject to an administrative fine in an
8 amount not less than \$50 and not exceeding \$100 for each
9 violation. Any class IV violation that is corrected during the
10 time the agency survey is conducted will be identified as an
11 agency finding and not as a violation.

12 (2) The agency may impose an administrative fine for
13 violations which do not qualify as class I, class II, class
14 III, or class IV violations. The amount of the fine shall not
15 exceed \$250 for each violation or \$2,000 in the aggregate.
16 Unclassified violations include:

17 (a) Violating any term or condition of a license.

18 (b) Violating any provision of rule adopted under this
19 part, part II of chapter 408, or applicable rules.

20 (c) Failure to follow the criteria and procedures
21 provided under part I of chapter 394 relating to the
22 transportation, voluntary admission, and involuntary
23 examination of adult family-care home residents.

24 (d) Exceeding licensed capacity.

25 (e) Providing services beyond the scope of the
26 license.

27 (f) Violating a moratorium.

28 ~~(3) Each day during which a violation occurs~~
29 ~~constitutes a separate offense.~~

30

31

1 (3)~~(4)~~ In determining whether a penalty is to be
2 imposed, and in fixing the amount of any penalty to be
3 imposed, the agency must consider:

- 4 (a) The gravity of the violation.
- 5 (b) Actions taken by the provider to correct a
6 violation.
- 7 (c) Any previous violation by the provider.
- 8 (d) The financial benefit to the provider of
9 committing or continuing the violation.

10 (4)~~(5)~~ As an alternative to or in conjunction with an
11 administrative action against a provider, the agency may
12 request a plan of corrective action that demonstrates a good
13 faith effort to remedy each violation by a specific date,
14 subject to the approval of the agency.

15 (5)~~(6)~~ The department shall set forth, by rule, notice
16 requirements and procedures for correction of deficiencies.

17 ~~(7) Civil penalties paid by a provider must be
18 deposited into the Department of Elderly Affairs
19 Administrative Trust Fund and used to offset the expenses of
20 departmental training and education for adult family care home
21 providers.~~

22 ~~(8) The agency may impose an immediate moratorium on
23 admissions to any adult family care home if the agency finds
24 that a condition in the home presents a threat to the health,
25 safety, or welfare of its residents. The department may by
26 rule establish facility conditions that constitute grounds for
27 imposing a moratorium and establish procedures for imposing
28 and lifting a moratorium.~~

29 Section 141. Section 400.621, Florida Statutes, is
30 amended to read:

31

1 400.621 Rules and standards relating to adult
2 family-care homes.--

3 (1) The ~~agency department~~, in consultation with the
4 Department of Health, the Department of Children and Family
5 Services, and the ~~department agency~~ shall, by rule, establish
6 minimum standards to ensure the health, safety, and well-being
7 of each resident in the adult family-care home pursuant to
8 this part and part II of chapter 408. The rules must address:

9 (a) Requirements for the physical site of the facility
10 and facility maintenance.

11 (b) Services that must be provided to all residents of
12 an adult family-care home and standards for such services,
13 which must include, but need not be limited to:

14 1. Room and board.

15 2. Assistance necessary to perform the activities of
16 daily living.

17 3. Assistance necessary to administer medication.

18 4. Supervision of residents.

19 5. Health monitoring.

20 6. Social and leisure activities.

21 (c) Standards and procedures for license application
22 and annual license renewal, advertising, proper management of
23 each resident's funds and personal property and personal
24 affairs, financial ability to operate, medication management,
25 inspections, complaint investigations, and facility, staff,
26 and resident records.

27 (d) Qualifications, training, standards, and
28 responsibilities for providers and staff.

29 (e) Compliance with chapter 419, relating to community
30 residential homes.

31

1 (f) Criteria and procedures for determining the
2 appropriateness of a resident's placement and continued
3 residency in an adult family-care home. A resident who
4 requires 24-hour nursing supervision may not be retained in an
5 adult family-care home unless such resident is an enrolled
6 hospice patient and the resident's continued residency is
7 mutually agreeable to the resident and the provider.

8 (g) Procedures for providing notice and assuring the
9 least possible disruption of residents' lives when residents
10 are relocated, an adult family-care home is closed, or the
11 ownership of an adult family-care home is transferred.

12 (h) Procedures to protect the residents' rights as
13 provided in s. 400.628.

14 (i) Procedures to promote the growth of adult
15 family-care homes as a component of a long-term care system.

16 (j) Procedures to promote the goal of aging in place
17 for residents of adult family-care homes.

18 (2) The agency ~~department~~ shall by rule provide
19 minimum standards and procedures for emergencies. Pursuant to
20 s. 633.022, the State Fire Marshal, in consultation with the
21 department and the agency, shall adopt uniform firesafety
22 standards for adult family-care homes.

23 (3) The agency ~~department~~ shall adopt rules providing
24 for the implementation of orders not to resuscitate. The
25 provider may withhold or withdraw cardiopulmonary
26 resuscitation if presented with an order not to resuscitate
27 executed pursuant to s. 401.45. The provider shall not be
28 subject to criminal prosecution or civil liability, nor be
29 considered to have engaged in negligent or unprofessional
30 conduct, for withholding or withdrawing cardiopulmonary
31

1 resuscitation pursuant to such an order and applicable rules
2 ~~adopted by the department.~~

3 ~~(4) The provider of any adult family care home that is~~
4 ~~in operation at the time any rules are adopted or amended~~
5 ~~under this part may be given a reasonable time, not exceeding~~
6 ~~6 months, within which to comply with the new or revised rules~~
7 ~~and standards.~~

8 Section 142. Subsection (3) of section 400.6211,
9 Florida Statutes, is amended to read:

10 400.6211 Training and education programs.--

11 (3) Effective January 1, 2004, providers must complete
12 the training and education program within a reasonable time
13 determined by the agency ~~department~~. Failure to complete the
14 training and education program within the time set by the
15 agency ~~department~~ is a violation of this part and subjects the
16 provider to revocation of the license.

17 Section 143. Section 400.622, Florida Statutes, is
18 repealed.

19 Section 144. Subsection (2) of section 400.625,
20 Florida Statutes, is amended to read:

21 400.625 Residency agreements.--

22 (2) Each residency agreement must specify the personal
23 care and accommodations to be provided by the adult
24 family-care home, the rates or charges, a requirement of at
25 least 30 days' notice before a rate increase, and any other
26 provisions required by rule of the agency ~~department~~.

27 Section 145. Section 400.801, Florida Statutes, is
28 amended to read:

29 400.801 Homes for special services.--

30 (1) As used in this section, the term:
31

1 (a) "Agency" means the "Agency for Health Care
2 Administration."

3 (b) "Home for special services" means a site where
4 specialized health care services are provided, including
5 personal and custodial care, but not continuous nursing
6 services.

7 (2) The requirements of part II of chapter 408 apply
8 to the provision of services that necessitate licensure
9 pursuant to this section 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
12 section. However, an applicant for licensure is exempt from
13 the provisions of s. 408.810(7), (8), (9), and (10). A person
14 must obtain a license from the agency to operate a home for
15 special services. A license is valid for 1 year.

16 (3) In accordance with s. 408.805, an applicant or
17 licensee shall pay a fee for each license application
18 submitted under this section and part II of chapter 408. The
19 amount of the fee shall be established by rule and may not be
20 more than \$2,000 per biennium. The application for a license
21 under this section must be made on a form provided by the
22 agency. A nonrefundable license fee of not more than \$1,000
23 must be submitted with the license application.

24 ~~(4) Each applicant for licensure must comply with the~~
25 ~~following requirements:~~

26 ~~(a) Upon receipt of a completed, signed, and dated~~
27 ~~application, the agency shall require background screening, in~~
28 ~~accordance with the level 2 standards for screening set forth~~
29 ~~in chapter 435, of the managing employee, or other similarly~~
30 ~~titled individual who is responsible for the daily operation~~
31 ~~of the facility, and of the financial officer, or other~~

1 ~~similarly titled individual who is responsible for the~~
2 ~~financial operation of the facility, including billings for~~
3 ~~client care and services, in accordance with the level 2~~
4 ~~standards for screening set forth in chapter 435. The~~
5 ~~applicant must comply with the procedures for level 2~~
6 ~~background screening as set forth in chapter 435.~~

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

12 ~~(c) Proof of compliance with the level 2 background~~
13 ~~screening requirements of chapter 435 which has been submitted~~
14 ~~within the previous 5 years in compliance with any other~~
15 ~~health care or assisted living licensure requirements of this~~
16 ~~state is acceptable in fulfillment of the requirements of~~
17 ~~paragraph (a).~~

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

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

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

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

1 ~~director's relationship to the corporation satisfies the~~
2 ~~requirements of this paragraph.~~

3 ~~(g) A license may not be granted to an applicant if~~
4 ~~the applicant or managing employee has been found guilty of,~~
5 ~~regardless of adjudication, or has entered a plea of nolo~~
6 ~~contendere or guilty to, any offense prohibited under the~~
7 ~~level 2 standards for screening set forth in chapter 435,~~
8 ~~unless an exemption from disqualification has been granted by~~
9 ~~the agency as set forth in chapter 435.~~

10 ~~(h) The agency may deny or revoke licensure if the~~
11 ~~applicant:~~

12 ~~1. Has falsely represented a material fact in the~~
13 ~~application required by paragraph (c) or paragraph (f), or has~~
14 ~~omitted any material fact from the application required by~~
15 ~~paragraph (c) or paragraph (f); or~~

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

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

21 ~~(5) Application for license renewal must be submitted~~
22 ~~90 days before the expiration of the license.~~

23 ~~(6) A change of ownership or control of a home for~~
24 ~~special services must be reported to the agency in writing at~~
25 ~~least 60 days before the change is scheduled to take effect.~~

26 ~~(4)(7)~~ may shall The agency may shall adopt rules for
27 implementing and enforcing this section and part II of chapter
28 408.

29 ~~(8)(a) It is unlawful for any person to establish,~~
30 ~~conduct, manage, or operate a home for special services~~
31 ~~without obtaining a license from the agency.~~

1 ~~(b) It is unlawful for any person to offer or~~
2 ~~advertise to the public, in any medium whatever, specialized~~
3 ~~health care services without obtaining a license from the~~
4 ~~agency.~~

5 ~~(c) It is unlawful for a holder of a license issued~~
6 ~~under this section to advertise or represent to the public~~
7 ~~that it holds a license for a type of facility other than the~~
8 ~~facility for which its license is issued.~~

9 ~~(5)(9)(a) In accordance with part II of chapter 408, a~~
10 ~~violation of any provision of this section, part II of chapter~~
11 ~~408, or applicable rules adopted by the agency for~~
12 ~~implementing this section is punishable by payment of an~~
13 ~~administrative fine not to exceed \$5,000.~~

14 ~~(b) A violation of subsection (8) or rules adopted~~
15 ~~under that subsection is a misdemeanor of the first degree,~~
16 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
17 ~~of continuing violation is a separate offense.~~

18 Section 146. Section 400.805, Florida Statutes, is
19 amended to read:

20 400.805 Transitional living facilities.--

21 (1) As used in this section, the term:

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

24 (b) "Department" means the Department of Health.

25 (c) "Transitional living facility" means a site where
26 specialized health care services are provided, including, but
27 not limited to, rehabilitative services, community reentry
28 training, aids for independent living, and counseling to
29 spinal-cord-injured persons and head-injured persons. This
30 term does not include a hospital licensed under chapter 395 or
31 any federally operated hospital or facility.

1 (2)(a) The requirements of part II of chapter 408
2 apply to the provision of services that necessitate licensure
3 pursuant to this section and part II of chapter 408 and to
4 entities licensed by or applying for such licensure from the
5 Agency for Health Care Administration pursuant to this
6 section. However, an applicant for licensure is exempt from
7 the provisions of s. 408.810(7), (8), (9), and (10). A person
8 must obtain a license from the agency to operate a
9 transitional living facility. A license issued under this
10 section is valid for 1 year.

11 (b) In accordance with s. 408.805, an applicant or
12 licensee shall pay a fee for each license application
13 submitted under this section and part II of chapter 408. The
14 fee shall be comprised of a license fee of \$4,000 per biennium
15 and a fee of \$78.50 for each bed per biennium, unless modified
16 by rule. The application for a license must be made on a form
17 provided by the agency. A nonrefundable license fee of \$2,000
18 and a fee of up to \$39.25 per bed must be submitted with the
19 license application.

20 (c) The agency may not issue a license to an applicant
21 until the agency receives notice from the department as
22 provided in paragraph (6)(b).

23 ~~(3) 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 employee, or other similarly~~
29 ~~titled individual who is responsible for the daily operation~~
30 ~~of the facility, and of the financial officer, or other~~
31 ~~similarly titled individual who is responsible for the~~

1 ~~financial operation of the facility, including billings for~~
2 ~~client care and services. The applicant must comply with the~~
3 ~~procedures for level 2 background screening as set forth in~~
4 ~~chapter 435.~~

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 or assisted living licensure requirements of this~~
14 ~~state is acceptable in fulfillment of the requirements of~~
15 ~~paragraph (a).~~

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

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

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

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

1 ~~(g) 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 (c) or paragraph (f), or has~~
12 ~~omitted any material fact from the application required by~~
13 ~~paragraph (c) 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 (c).~~

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

19 ~~(4) An application for renewal of license must be~~
20 ~~submitted 90 days before the expiration of the license. Upon~~
21 ~~renewal of licensure, each applicant must submit to the~~
22 ~~agency, under penalty of perjury, an affidavit as set forth in~~
23 ~~paragraph (3)(d).~~

24 ~~(5) A change of ownership or control of a transitional~~
25 ~~living facility must be reported to the agency in writing at~~
26 ~~least 60 days before the change is scheduled to take effect.~~

27 ~~(3)(6)(a)~~ (3)(6)(a) The agency shall adopt rules in consultation
28 with the department governing the physical plant of
29 transitional living facilities and the fiscal management of
30 transitional living facilities.

31

1 (b) The department shall adopt rules in consultation
2 with the agency governing the services provided to clients of
3 transitional living facilities. The department shall enforce
4 all requirements for providing services to the facility's
5 clients. The department must notify the agency when it
6 determines that an applicant for licensure meets the service
7 requirements adopted by the department.

8 (c) The agency and the department shall enforce
9 requirements under this section, as such requirements relate
10 to them respectively, and their respective adopted rules.

11 ~~(7)(a) It is unlawful for any person to establish,~~
12 ~~conduct, manage, or operate a transitional living facility~~
13 ~~without obtaining a license from the agency.~~

14 ~~(b) It is unlawful for any person to offer or~~
15 ~~advertise to the public, in any medium whatever, services or~~
16 ~~care defined in paragraph (1)(c) without obtaining a license~~
17 ~~from the agency.~~

18 ~~(c) It is unlawful for a holder of a license issued~~
19 ~~under this section to advertise or represent to the public~~
20 ~~that it holds a license for a type of facility other than the~~
21 ~~facility for which its license is issued.~~

22 (4)(8) Any designated officer or employee of the
23 agency, of the state, or of the local fire marshal may enter
24 unannounced upon and into the premises of any facility
25 licensed under this section in order to determine the state of
26 compliance with this section and the rules or standards in
27 force under this section. The right of entry and inspection
28 also extends to any premises that the agency has reason to
29 believe are being operated or maintained as a facility without
30 a license; but such an entry or inspection may not be made
31 without the permission of the owner or person in charge of the

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

27 ~~(5)(9)~~ The agency may institute injunctive proceedings
28 in a court of competent jurisdiction for temporary or
29 permanent relief to:

30 (a) Enforce this section or any minimum standard,
31 rule, or order issued pursuant thereto if the agency's effort

1 to correct a violation through administrative fines has failed
2 or when the violation materially affects the health, safety,
3 or welfare of residents; or

4 (b) Terminate the operation of a facility if a
5 violation of this section or of any standard or rule adopted
6 pursuant thereto exists which materially affects the health,
7 safety, or welfare of residents.

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

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

23 ~~(6)(11)(a)~~ In accordance with part II of chapter 408,
24 a violation of any provision of this section, part II of
25 chapter 408, or applicable rules adopted by the agency or
26 department under this section is punishable by payment of an
27 administrative or a civil penalty fine not to exceed \$5,000.

28 ~~(b) A violation of subsection (7) or rules adopted~~
29 ~~under that subsection is a misdemeanor of the first degree,~~
30 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
31 ~~of a continuing violation is a separate offense.~~

1 Section 147. Subsection (4) of section 400.902,
2 Florida Statutes, is amended to read:

3 400.902 Definitions.--As used in this part, the term:

4 (4) "Owner or operator" means a licensee ~~any~~
5 ~~individual who has general administrative charge of a PPEC~~
6 ~~center.~~

7 Section 148. Subsection (3) is added to section
8 400.903, Florida Statutes, to read:

9 400.903 PPEC centers to be licensed; exemptions.--

10 (3) The requirements of part II of chapter 408 apply
11 to the provision of services that necessitate licensure
12 pursuant to this part and part II of chapter 408 and to
13 entities licensed by or applying for such licensure from the
14 Agency for Health Care Administration pursuant to this part.
15 However, an applicant for licensure is exempt from the
16 provisions of s. 408.810(10).

17 Section 149. Section 400.905, Florida Statutes, is
18 amended to read:

19 400.905 License required; fee; exemption; display.--

20 ~~(1)(a) It is unlawful to operate or maintain a PPEC~~
21 ~~center without first obtaining from the agency a license~~
22 ~~authorizing such operation. The agency is responsible for~~
23 ~~licensing PPEC centers in accordance with the provisions of~~
24 ~~this part.~~

25 ~~(b) Any person who violates paragraph (a) is guilty of~~
26 ~~a felony of the third degree, punishable as provided in s.~~
27 ~~775.082, s. 775.083, or s. 775.084.~~

28 (1)(2) Separate licenses are required for PPEC centers
29 maintained on separate premises, even though they are operated
30 under the same management. Separate licenses are not required
31 for separate buildings on the same grounds.

1 ~~(2)(3)~~ In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part and part II of chapter 408. The
4 amount of the fee shall be established by rule and may not be
5 less than \$1,000 or more than \$3,000 per biennium. The annual
6 license fee required of a PPEC center shall be in an amount
7 determined by the agency to be sufficient to cover the
8 agency's costs in carrying out its responsibilities under this
9 part, but shall not be less than \$500 or more than \$1,500.

10 ~~(3)(4)~~ County-operated or municipally operated PPEC
11 centers applying for licensure under this part are exempt from
12 the payment of license fees.

13 ~~(5)~~ The license shall be displayed in a conspicuous
14 place inside the PPEC center.

15 ~~(6)~~ A license shall be valid only in the possession of
16 the individual, firm, partnership, association, or corporation
17 to whom it is issued and shall not be subject to sale,
18 assignment, or other transfer, voluntary or involuntary; nor
19 shall a license be valid for any premises other than that for
20 which originally issued.

21 ~~(7)~~ Any license granted by the agency shall state the
22 maximum capacity of the facility, the date the license was
23 issued, the expiration date of the license, and any other
24 information deemed necessary by the agency.

25 Section 150. Section 400.906, Florida Statutes, is
26 repealed.

27 Section 151. Section 400.907, Florida Statutes, is
28 amended to read:

29 400.907 Denial or, ~~suspension~~, revocation of
30 licensure; administrative fines; grounds.--

31

1 (1) In accordance with part II of chapter 408, the
 2 agency may deny ~~or,~~ revoke, ~~or suspend~~ a license or impose an
 3 administrative fine for a violation of any provision of this
 4 part, part II of chapter 408, or applicable rules in the
 5 ~~manner provided in chapter 120.~~

6 (2) Any of the following actions by a PPEC center ~~or~~
 7 ~~its~~ employee is grounds for action by the agency against a
 8 PPEC center or its employee:

9 (a) An intentional or negligent act materially
 10 affecting the health or safety of children in the PPEC center.

11 (b) A violation of the provisions of this part, part
 12 II of chapter 408, or applicable rules ~~or of any standards or~~
 13 ~~rules adopted pursuant to this part.~~

14 ~~(c) Multiple and repeated violations of this part or~~
 15 ~~of minimum standards or rules adopted pursuant to this part.~~

16 ~~(3) The agency shall be responsible for all~~
 17 ~~investigations and inspections conducted pursuant to this~~
 18 ~~part.~~

19 Section 152. Section 400.908, Florida Statutes, is
 20 amended to read:

21 400.908 Administrative fines; disposition of fees and
 22 fines.--

23 (1)(a) If the agency determines that a PPEC center is
 24 ~~being operated without a license or is otherwise not in~~
 25 compliance with ~~rules adopted under~~ this part, part II of
 26 chapter 408, or applicable rules, the agency, notwithstanding
 27 any other administrative action it takes, shall make a
 28 reasonable attempt to discuss each violation and recommended
 29 corrective action with the owner of the PPEC center prior to
 30 written notification thereof. The agency may request that the
 31 PPEC center submit a corrective action plan which demonstrates

1 a good faith effort to remedy each violation by a specific
2 date, subject to the approval of the agency.

3 (b) In accordance with part II of chapter 408, the
4 agency may fine a PPEC center or employee found in violation
5 of ~~rules adopted pursuant to this part, part II of chapter~~
6 408, or applicable rules in an amount not to exceed \$500 for
7 each violation. Such fine may not exceed \$5,000 in the
8 aggregate.

9 (c) The failure to correct a violation by the date set
10 by the agency, or the failure to comply with an approved
11 corrective action plan, is a separate violation for each day
12 such failure continues, unless the agency approves an
13 extension to a specific date.

14 ~~(d) If a PPEC center desires to appeal any agency~~
15 ~~action under this section and the fine is upheld, the violator~~
16 ~~shall pay the fine, plus interest at the legal rate specified~~
17 ~~in s. 687.01, for each day beyond the date set by the agency~~
18 ~~for payment of the fine.~~

19 (2) In determining if a fine is to be imposed and in
20 fixing the amount of any fine, the agency shall consider the
21 following factors:

22 (a) The gravity of the violation, including the
23 probability that death or serious physical or emotional harm
24 to a child will result or has resulted, the severity of the
25 actual or potential harm, and the extent to which the
26 provisions of the applicable statutes or rules were violated.

27 (b) Actions taken by the owner or operator to correct
28 violations.

29 (c) Any previous violations.

30 (d) The financial benefit to the PPEC center of
31 committing or continuing the violation.

1 ~~(3) Fees and fines received by the agency under this~~
2 ~~part shall be deposited in the Health Care Trust Fund created~~
3 ~~in s. 408.16.~~

4 Section 153. Sections 400.910 and 400.911, Florida
5 Statutes, are repealed.

6 Section 154. Section 400.912, Florida Statutes, is
7 amended to read:

8 400.912 Closing of a PPEC center.--

9 ~~(1) Whenever a PPEC center voluntarily discontinues~~
10 ~~operation, it shall inform the agency in writing at least 30~~
11 ~~days before the discontinuance of operation. The PPEC center~~
12 ~~shall also, at such time, inform each child's legal guardian~~
13 ~~of the fact and the proposed time of such discontinuance.~~

14 ~~(2) Immediately upon discontinuance of the operation~~
15 ~~of a PPEC center, the owner or operator shall surrender the~~
16 ~~license therefor to the agency and the license shall be~~
17 ~~canceled.~~

18 Section 155. Section 400.913, Florida Statutes, is
19 repealed.

20 Section 156. Subsection (1) of section 400.914,
21 Florida Statutes, is amended to read:

22 400.914 Rules establishing standards.--

23 (1) Pursuant to the intention of the Legislature to
24 provide safe and sanitary facilities and healthful programs,
25 the agency in conjunction with the Division of Children's
26 Medical Services Prevention and Intervention of the Department
27 of Health shall adopt and publish rules to implement the
28 provisions of this part and part II of chapter 408, which
29 shall include reasonable and fair standards. Any conflict
30 between these standards and those that may be set forth in
31 local, county, or city ordinances shall be resolved in favor

1 of those having statewide effect. Such standards shall relate
2 to:

3 (a) The assurance that PPEC services are family
4 centered and provide individualized medical, developmental,
5 and family training services.

6 (b) The maintenance of PPEC centers, not in conflict
7 with the provisions of chapter 553 and based upon the size of
8 the structure and number of children, relating to plumbing,
9 heating, lighting, ventilation, and other building conditions,
10 including adequate space, which will ensure the health,
11 safety, comfort, and protection from fire of the children
12 served.

13 (c) The appropriate provisions of the most recent
14 edition of the "Life Safety Code" (NFPA-101) shall be applied.

15 (d) The number and qualifications of all personnel who
16 have responsibility for the care of the children served.

17 (e) All sanitary conditions within the PPEC center and
18 its surroundings, including water supply, sewage disposal,
19 food handling, and general hygiene, and maintenance thereof,
20 which will ensure the health and comfort of children served.

21 (f) Programs and basic services promoting and
22 maintaining the health and development of the children served
23 and meeting the training needs of the children's legal
24 guardians.

25 (g) Supportive, contracted, other operational, and
26 transportation services.

27 (h) Maintenance of appropriate medical records, data,
28 and information relative to the children and programs. Such
29 records shall be maintained in the facility for inspection by
30 the agency.

31

1 Section 157. Section 400.915, Florida Statutes, is
2 amended to read:

3 400.915 Construction and renovation;
4 requirements.--The requirements for the construction or
5 renovation of a PPEC center shall comply with:

6 (1) The provisions of chapter 553, which pertain to
7 building construction standards, including plumbing,
8 electrical code, glass, manufactured buildings, accessibility
9 for the physically disabled;

10 (2) The minimum standards for physical facilities in
11 rule 10M-12.003, Florida Administrative Code, Child Care
12 Standards; and

13 (3) The standards or rules adopted pursuant to this
14 part and part II of chapter 408.

15 Section 158. Sections 400.916 and 400.917, Florida
16 Statutes, are repealed.

17 Section 159. Section 400.925, Florida Statutes, is
18 amended to read:

19 400.925 Definitions.--As used in this part, the term:

20 (1) "Accrediting organizations" means the Joint
21 Commission on Accreditation of Healthcare Organizations or
22 other national accreditation agencies whose standards for
23 accreditation are comparable to those required by this part
24 for licensure.

25 ~~(2) "Affiliated person" means any person who directly~~
26 ~~or indirectly manages, controls, or oversees the operation of~~
27 ~~a corporation or other business entity that is a licensee,~~
28 ~~regardless of whether such person is a partner, shareholder,~~
29 ~~owner, officer, director, agent, or employee of the entity.~~

30 ~~(2)(3)~~ "Agency" means the Agency for Health Care
31 Administration.

1 ~~(4)~~ "Applicant" means an individual applicant in the
2 case of a sole proprietorship, or any officer, director,
3 agent, managing employee, general manager, or affiliated
4 person, or any partner or shareholder having an ownership
5 interest equal to 5 percent or greater in the corporation,
6 partnership, or other business entity.

7 (3)~~(5)~~ "Consumer" or "patient" means any person who
8 uses home medical equipment in his or her place of residence.

9 (4)~~(6)~~ "Department" means the Department of Children
10 and Family Services.

11 (5)~~(7)~~ "General manager" means the individual who has
12 the general administrative charge of the premises of a
13 licensed home medical equipment provider.

14 (6)~~(8)~~ "Home medical equipment" includes any product
15 as defined by the Federal Drug Administration's Drugs, Devices
16 and Cosmetics Act, any products reimbursed under the Medicare
17 Part B Durable Medical Equipment benefits, or any products
18 reimbursed under the Florida Medicaid durable medical
19 equipment program. Home medical equipment includes oxygen and
20 related respiratory equipment; manual, motorized, or
21 customized wheelchairs and related seating and positioning,
22 but does not include prosthetics or orthotics or any splints,
23 braces, or aids custom fabricated by a licensed health care
24 practitioner; motorized scooters; personal transfer systems;
25 and specialty beds, for use by a person with a medical need.

26 (7)~~(9)~~ "Home medical equipment provider" means any
27 person or entity that sells or rents or offers to sell or rent
28 to or for a consumer:

29 (a) Any home medical equipment and services; or

30 (b) Home medical equipment that requires any home
31 medical equipment services.

1 ~~(8)(10)~~ "Home medical equipment provider personnel"
2 means persons who are employed by or under contract with a
3 home medical equipment provider.

4 ~~(9)(11)~~ "Home medical equipment services" means
5 equipment management and consumer instruction, including
6 selection, delivery, setup, and maintenance of equipment, and
7 other related services for the use of home medical equipment
8 in the consumer's regular or temporary place of residence.

9 ~~(10)(12)~~ "Licensee" means the person or entity to whom
10 a license to operate as a home medical equipment provider is
11 issued by the agency.

12 ~~(11)(13)~~ "Moratorium" has the same meaning as in s.
13 408.803, except that means a mandated temporary cessation or
14 suspension of the sale, rental, or offering of equipment after
15 the imposition of the moratorium. services related to
16 equipment sold or rented prior to the moratorium must be
17 continued without interruption, unless deemed otherwise by the
18 agency.

19 ~~(12)(14)~~ "Person" means any individual, firm,
20 partnership, corporation, or association.

21 ~~(13)(15)~~ "Premises" means those buildings and
22 equipment which are located at the address of the licensed
23 home medical equipment provider for the provision of home
24 medical equipment services, which are in such reasonable
25 proximity as to appear to the public to be a single provider
26 location, and which comply with zoning ordinances.

27 ~~(14)(16)~~ "Residence" means the consumer's home or
28 place of residence, which may include nursing homes, assisted
29 living facilities, transitional living facilities, adult
30 family-care homes, or other congregate residential facilities.

31

1 Section 160. Subsection (3) and paragraphs (d) and (e)
2 of subsection (6) of section 400.93, Florida Statutes, are
3 amended to read:

4 400.93 Licensure required; exemptions; unlawful acts;
5 penalties.--

6 (3) The requirements of part II of chapter 408 apply
7 to the provision of services that necessitate licensure
8 pursuant to this part and part II of chapter 408 and to
9 entities licensed by or applying for such licensure from the
10 Agency for Health Care Administration pursuant to this part.
11 However, an applicant for licensure is exempt from the
12 provisions of s. 408.810(8) and (10). A home medical equipment
13 provider must be licensed by the agency to operate in this
14 state or to provide home medical equipment and services to
15 consumers in this state. A standard license issued to a home
16 medical equipment provider, unless sooner suspended or
17 revoked, expires 2 years after its effective date.

18 (6)

19 ~~(d) The following penalties shall be imposed for~~
20 ~~operating an unlicensed home medical equipment provider:~~

21 1. ~~Any person or entity who operates an unlicensed~~
22 ~~provider commits a felony of the third degree.~~

23 2. ~~For any person or entity who has received~~
24 ~~government reimbursement for services provided by an~~
25 ~~unlicensed provider, the agency shall make a fraud referral to~~
26 ~~the appropriate government reimbursement program.~~

27 3. ~~For any licensee found to be concurrently operating~~
28 ~~licensed and unlicensed provider premises, the agency may~~
29 ~~impose a fine or moratorium, or revoke existing licenses of~~
30 ~~any or all of the licensee's licensed provider locations until~~
31 ~~such time as the unlicensed provider premises is licensed.~~

1 ~~(c) A provider found to be operating without a license~~
2 ~~may apply for licensure, and must cease operations until a~~
3 ~~license is awarded by the agency.~~

4 Section 161. Section 400.931, Florida Statutes, is
5 amended to read:

6 400.931 Application for license; fee; provisional
7 license; temporary permit.--

8 ~~(1) Application for an initial license or for renewal~~
9 ~~of an existing license must be made under oath to the agency~~
10 ~~on forms furnished by it and must be accompanied by the~~
11 ~~appropriate license fee as provided in subsection (12).~~

12 (1)(2) The applicant must file with the application
13 satisfactory proof that the home medical equipment provider is
14 in compliance with this part and applicable rules, including:

15 (a) A report, by category, of the equipment to be
16 provided, indicating those offered either directly by the
17 applicant or through contractual arrangements with existing
18 providers. Categories of equipment include:

- 19 1. Respiratory modalities.
- 20 2. Ambulation aids.
- 21 3. Mobility aids.
- 22 4. Sickroom setup.
- 23 5. Disposables.

24 (b) A report, by category, of the services to be
25 provided, indicating those offered either directly by the
26 applicant or through contractual arrangements with existing
27 providers. Categories of services include:

- 28 1. Intake.
- 29 2. Equipment selection.
- 30 3. Delivery.
- 31 4. Setup and installation.

1 5. Patient training.
2 6. Ongoing service and maintenance.
3 7. Retrieval.
4 (c) A listing of those with whom the applicant
5 contracts, both the providers the applicant uses to provide
6 equipment or services to its consumers and the providers for
7 whom the applicant provides services or equipment.
8 (2)(3) The applicant for initial licensure must
9 demonstrate financial ability to operate, which may be
10 accomplished by the submission of a \$50,000 surety bond to the
11 agency in lieu of the requirements of s. 408.810(8).
12 ~~(4) An applicant for renewal who has demonstrated~~
13 ~~financial inability to operate must demonstrate financial~~
14 ~~ability to operate.~~
15 ~~(5) Each applicant for licensure must comply with the~~
16 ~~following requirements:~~
17 ~~(a) Upon receipt of a completed, signed, and dated~~
18 ~~application, the agency shall require background screening of~~
19 ~~the applicant, in accordance with the level 2 standards for~~
20 ~~screening set forth in chapter 435. As used in this~~
21 ~~subsection, the term "applicant" means the general manager and~~
22 ~~the financial officer or similarly titled individual who is~~
23 ~~responsible for the financial operation of the licensed~~
24 ~~facility.~~
25 ~~(b) The agency may require background screening for a~~
26 ~~member of the board of directors of the licensee or an officer~~
27 ~~or an individual owning 5 percent or more of the licensee if~~
28 ~~the agency has probable cause to believe that such individual~~
29 ~~has been convicted of an offense prohibited under the level 2~~
30 ~~standards for screening set forth in chapter 435.~~
31

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

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

13 ~~(e) 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's 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 provision.~~

31

1 ~~(f) A license may not be granted to any potential~~
2 ~~licensee if any applicant, administrator, or financial officer~~
3 ~~has been found guilty of, regardless of adjudication, or has~~
4 ~~entered a plea of nolo contendere or guilty to, any offense~~
5 ~~prohibited under the level 2 standards for screening set forth~~
6 ~~in chapter 435, unless an exemption from disqualification has~~
7 ~~been granted by the agency as set forth in chapter 435.~~

8 ~~(g) The agency may deny or revoke licensure to any~~
9 ~~potential licensee if any applicant:~~

10 1. ~~Has falsely represented a material fact in the~~
11 ~~application required by paragraphs (d) and (e), or has omitted~~
12 ~~any material fact from the application required by paragraphs~~
13 ~~(d) and (e); or~~

14 2. ~~Has had prior Medicaid or Medicare action taken~~
15 ~~against the applicant as set forth in paragraph (d).~~

16 ~~(h) Upon licensure renewal, each applicant must submit~~
17 ~~to the agency, under penalty of perjury, an affidavit of~~
18 ~~compliance with the background screening provisions of this~~
19 ~~section.~~

20 ~~(3)(6)~~ As specified in part II of chapter 408, the
21 home medical equipment provider must also obtain and maintain
22 professional and commercial liability insurance. Proof of
23 liability insurance, as defined in s. 624.605, must be
24 submitted with the application. The agency shall set the
25 required amounts of liability insurance by rule, but the
26 required amount must not be less than \$250,000 per claim. In
27 the case of contracted services, it is required that the
28 contractor have liability insurance not less than \$250,000 per
29 claim.

30 ~~(7) A provisional license shall be issued to an~~
31 ~~approved applicant for initial licensure for a period of 90~~

1 ~~days, during which time a survey must be conducted~~
2 ~~demonstrating substantial compliance with this section. A~~
3 ~~provisional license shall also be issued pending the results~~
4 ~~of an applicant's Federal Bureau of Investigation report of~~
5 ~~background screening confirming that all standards have been~~
6 ~~met. If substantial compliance is demonstrated, a standard~~
7 ~~license shall be issued to expire 2 years after the effective~~
8 ~~date of the provisional license.~~

9 ~~(8) Ninety days before the expiration date, an~~
10 ~~application for license renewal must be submitted to the~~
11 ~~agency under oath on forms furnished by the agency, and a~~
12 ~~license shall be renewed if the applicant has met the~~
13 ~~requirements established under this part and applicable rules.~~
14 ~~The home medical equipment provider must file with the~~
15 ~~application satisfactory proof that it is in compliance with~~
16 ~~this part and applicable rules. The home medical equipment~~
17 ~~provider must submit satisfactory proof of its financial~~
18 ~~ability to comply with the requirements of this part.~~

19 ~~(9) When a change of ownership of a home medical~~
20 ~~equipment provider occurs, the prospective owner must submit~~
21 ~~an initial application for a license at least 15 days before~~
22 ~~the effective date of the change of ownership. An application~~
23 ~~for change of ownership of a license is required when~~
24 ~~ownership, a majority of the ownership, or controlling~~
25 ~~interest of a licensed home medical equipment provider is~~
26 ~~transferred or assigned and when a licensee agrees to~~
27 ~~undertake or provide services to the extent that legal~~
28 ~~liability for operation of the home medical equipment provider~~
29 ~~rests with the licensee. A provisional license shall be issued~~
30 ~~to the new owner for a period of 90 days, during which time~~
31 ~~all required documentation must be submitted and a survey must~~

1 ~~be conducted demonstrating substantial compliance with this~~
2 ~~section. If substantial compliance is demonstrated, a standard~~
3 ~~license shall be issued to expire 2 years after the issuance~~
4 ~~of the provisional license.~~

5 ~~(4)(10)~~ When a change of the general manager of a home
6 medical equipment provider occurs, the licensee must notify
7 the agency of the change within 45 days. ~~thereof and must~~
8 ~~provide evidence of compliance with the background screening~~
9 ~~requirements in subsection (5); except that a general manager~~
10 ~~who has met the standards for the Department of Law~~
11 ~~Enforcement background check, but for whom background~~
12 ~~screening results from the Federal Bureau of Investigation~~
13 ~~have not yet been received, may be employed pending receipt of~~
14 ~~the Federal Bureau of Investigation background screening~~
15 ~~report. An individual may not continue to serve as general~~
16 ~~manager if the Federal Bureau of Investigation background~~
17 ~~screening report indicates any violation of background~~
18 ~~screening standards.~~

19 ~~(5)(11)~~ 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 amount of the fee shall be established by rule and may not
23 exceed \$300 per biennium. All licensure fees required of a
24 ~~home medical equipment provider are nonrefundable.~~ The agency
25 shall set the fees in an amount that is sufficient to cover
26 its costs in carrying out its responsibilities under this
27 part. However, state, county, or municipal governments
28 applying for licenses under this part are exempt from the
29 payment of license fees. ~~All fees collected under this part~~
30 ~~must be deposited in the Health Care Trust Fund for the~~
31 ~~administration of this part.~~

1 ~~(6)(12)~~ An applicant for initial licensure, renewal,
2 or change of ownership shall also pay a license processing fee
3 ~~not to exceed \$300, to be paid by all applicants, and an~~
4 inspection fee, not to exceed \$400, which shall ~~to~~ be paid by
5 all applicants except those not subject to licensure
6 inspection by the agency as described in s. 400.933(2).

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

10 ~~(14) When a duplicate license is issued, a fee must be~~
11 ~~assessed, not to exceed the actual cost of duplicating and~~
12 ~~mailing.~~

13 ~~(15) When applications are mailed out upon request, a~~
14 ~~fee must be assessed, not to exceed the cost of the printing,~~
15 ~~preparation, and mailing.~~

16 ~~(16) The license must be displayed in a conspicuous~~
17 ~~place in the administrative office of the home medical~~
18 ~~equipment provider and is valid only while in the possession~~
19 ~~of the person or entity to which it is issued. The license may~~
20 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
21 ~~or involuntarily, and is valid only for the home medical~~
22 ~~equipment provider and location for which originally issued.~~

23 ~~(17) A home medical equipment provider against whom a~~
24 ~~proceeding for revocation or suspension, or for denial of a~~
25 ~~renewal application, is pending at the time of license renewal~~
26 ~~may be issued a provisional license effective until final~~
27 ~~disposition by the agency of such proceedings. If judicial~~
28 ~~relief is sought from the final disposition, the court that~~
29 ~~has jurisdiction may issue a temporary permit for the duration~~
30 ~~of the judicial proceeding.~~

31

1 Section 162. Section 400.932, Florida Statutes, is
2 amended to read:

3 400.932 Administrative penalties; injunctions;
4 emergency orders; moratoriums.--

5 (1) The agency may deny or, revoke, ~~or suspend~~ a
6 license, or impose an administrative fine not to exceed \$5,000
7 per violation, per day, or initiate injunctive proceedings
8 under s. 400.956.

9 (2) Any of the following actions by an employee of a
10 home medical equipment provider ~~or any of its employees~~ is
11 grounds for administrative action or penalties by the agency:

12 (a) Violation of this part or of applicable rules.

13 (b) An intentional, reckless, or negligent act that
14 materially affects the health or safety of a patient.

15 (3) The agency may deny or revoke the license of any
16 applicant that:

17 ~~(a) Made a false representation or omission of any~~
18 ~~material fact in making the application, including the~~
19 ~~submission of an application that conceals the controlling or~~
20 ~~ownership interest or any officer, director, agent, managing~~
21 ~~employee, affiliated person, partner, or shareholder who may~~
22 ~~not be eligible to participate;~~

23 (a)(b) Has been previously found by any professional
24 licensing, certifying, or standards board or agency to have
25 violated the standards or conditions relating to licensure or
26 certification or the quality of services provided.

27 "Professional licensing, certifying, or standards board or
28 agency" shall include, but is not limited to, practitioners,
29 health care facilities, programs, or services, or residential
30 care, treatment programs, or other human services; or
31

1 (b)(c) Has been or is currently excluded, suspended,
2 or terminated from, or has involuntarily withdrawn from,
3 participation in Florida's Medicaid program or any other
4 state's Medicaid program, or participation in the Medicare
5 program or any other governmental or private health care or
6 health insurance program.

7 ~~(4) The agency may issue an emergency order~~
8 ~~immediately suspending or revoking a license when it~~
9 ~~determines that any condition within the responsibility of the~~
10 ~~home medical equipment provider presents a clear and present~~
11 ~~danger to public health and safety.~~

12 ~~(5) The agency may impose an immediate moratorium on~~
13 ~~any licensed home medical equipment provider when the agency~~
14 ~~determines that any condition within the responsibility of the~~
15 ~~home medical equipment provider presents a threat to public~~
16 ~~health or safety.~~

17 Section 163. Section 400.933, Florida Statutes, is
18 amended to read:

19 400.933 Licensure inspections and investigations.--

20 ~~(1) The agency shall make or cause to be made such~~
21 ~~inspections and investigations as it considers necessary,~~
22 ~~including:~~

23 ~~(a) Licensure inspections.~~

24 ~~(b) Inspections directed by the federal Health Care~~
25 ~~Financing Administration.~~

26 ~~(c) Licensure complaint investigations, including full~~
27 ~~licensure investigations with a review of all licensure~~
28 ~~standards as outlined in the administrative rules. Complaints~~
29 ~~received by the agency from individuals, organizations, or~~
30 ~~other sources are subject to review and investigation by the~~
31 ~~agency.~~

1 ~~(2)~~ The agency shall accept, in lieu of its own
2 periodic inspections for licensure, submission of the
3 following:

4 ~~(1)(a)~~ The survey or inspection of an accrediting
5 organization, provided the accreditation of the licensed home
6 medical equipment provider is not provisional and provided the
7 licensed home medical equipment provider authorizes release
8 of, and the agency receives the report of, the accrediting
9 organization; or

10 ~~(2)(b)~~ A copy of a valid medical oxygen retail
11 establishment permit issued by the Department of Health,
12 pursuant to chapter 499.

13 Section 164. Section 400.935, Florida Statutes, is
14 amended to read:

15 400.935 Rules establishing minimum standards.--The
16 agency shall adopt, publish, and enforce rules to implement
17 this part and part II of chapter 408, which must provide
18 reasonable and fair minimum standards relating to:

19 (1) The qualifications and minimum training
20 requirements of all home medical equipment provider personnel.

21 ~~(2) License application and renewal.~~

22 ~~(3) License and inspection fees.~~

23 ~~(2)(4)~~ Financial ability to operate.

24 ~~(3)(5)~~ The administration of the home medical
25 equipment provider.

26 ~~(4)(6)~~ Procedures for maintaining patient records.

27 ~~(5)(7)~~ Ensuring that the home medical equipment and
28 services provided by a home medical equipment provider are in
29 accordance with the plan of treatment established for each
30 patient, when provided as a part of a plan of treatment.

31

1 ~~(6)(8)~~ Contractual arrangements for the provision of
 2 home medical equipment and services by providers not employed
 3 by the home medical equipment provider providing for the
 4 consumer's needs.

5 ~~(7)(9)~~ Physical location and zoning requirements.

6 ~~(8)(10)~~ Home medical equipment requiring home medical
 7 equipment services.

8 Section 165. Section 400.95, subsection (2) of section
 9 400.953, subsection (4) of section 400.955, and section
 10 400.956, Florida Statutes, are repealed.

11 Section 166. Subsection (5) of section 400.960,
 12 Florida Statutes, is amended to read:

13 400.960 Definitions.--As used in this part, the term:

14 (5) "Client" means any person receiving services in an
 15 intermediate care facility for the developmentally disabled
 16 ~~determined by the department to be eligible for developmental~~
 17 ~~services.~~

18 Section 167. Section 400.962, Florida Statutes, is
 19 amended to read:

20 400.962 License required; license application.--

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 by or applying for such licensure from the
 25 Agency for Health Care Administration pursuant to this part.
 26 However, an applicant for licensure is exempt from s.
 27 408.810(7). The licensure fee shall be \$234 per bed unless
 28 modified by rule. It is unlawful to operate an intermediate
 29 ~~care facility for the developmentally disabled without a~~
 30 ~~license.~~

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

5 ~~(3) The basic license fee collected shall be deposited~~
6 ~~in the Health Care Trust Fund, established for carrying out~~
7 ~~the purposes of this chapter.~~

8 ~~(4) The license must be conspicuously displayed inside~~
9 ~~the facility.~~

10 ~~(5) A license is valid only in the hands of the~~
11 ~~individual, firm, partnership, association, or corporation to~~
12 ~~whom it is issued. A license is not valid for any premises~~
13 ~~other than those for which it was originally issued and may~~
14 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
15 ~~or involuntarily.~~

16 ~~(6) An application for a license shall be made to the~~
17 ~~agency on forms furnished by it and must be accompanied by the~~
18 ~~appropriate license fee.~~

19 ~~(7) The application must be under oath and must~~
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 every~~
25 ~~member; if the applicant is a corporation, its name, address,~~
26 ~~and employer identification number (EIN), and the name and~~
27 ~~address of its director and officers and of each person having~~
28 ~~at least a 5 percent interest in the corporation; and the name~~
29 ~~by which the facility is to be known.~~

30 ~~(b) The name of any person whose name is required on~~
31 ~~the application under paragraph (a) and who owns at least a 10~~

1 ~~percent interest in any professional service, firm,~~
2 ~~association, partnership, or corporation providing goods,~~
3 ~~leases, or services to the facility for which the application~~
4 ~~is made, and the name and address of the professional service,~~
5 ~~firm, association, partnership, or corporation in which such~~
6 ~~interest is held.~~

7 ~~(c) The location of the facility for which a license~~
8 ~~is sought and an indication that such location conforms to the~~
9 ~~local zoning ordinances.~~

10 ~~(d) The name of the persons under whose management or~~
11 ~~supervision the facility will be operated.~~

12 ~~(e) The total number of beds.~~

13 (3)(8) The applicant must demonstrate that sufficient
14 numbers of staff, qualified by training or experience, will be
15 employed to properly care for the type and number of residents
16 who will reside in the facility.

17 ~~(9) The applicant must submit evidence that~~
18 ~~establishes the good moral character of the applicant,~~
19 ~~manager, supervisor, and administrator. An applicant who is an~~
20 ~~individual or a member of a board of directors or officer of~~
21 ~~an applicant that is a firm, partnership, association, or~~
22 ~~corporation must not have been convicted, or found guilty,~~
23 ~~regardless of adjudication, of a crime in any jurisdiction~~
24 ~~which affects or may potentially affect residents in the~~
25 ~~facility.~~

26 ~~(10)(a) Upon receipt of a completed, signed, and dated~~
27 ~~application, the agency shall require background screening of~~
28 ~~the applicant, in accordance with the level 2 standards for~~
29 ~~screening set forth in chapter 435. As used in this~~
30 ~~subsection, the term "applicant" means the facility~~
31 ~~administrator, or similarly titled individual who is~~

1 ~~responsible for the day to day operation of the licensed~~
2 ~~facility, and the facility financial officer, or similarly~~
3 ~~titled individual who is responsible for the financial~~
4 ~~operation of the licensed facility.~~

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

11 ~~(c) Proof of compliance with the level 2 background~~
12 ~~screening requirements of chapter 435 which has been submitted~~
13 ~~within the previous 5 years in compliance with any other~~
14 ~~licensure requirements under this chapter satisfies the~~
15 ~~requirements of paragraph (a). Proof of compliance with~~
16 ~~background screening which has been submitted within the~~
17 ~~previous 5 years to fulfill the requirements of the Financial~~
18 ~~Services Commission and the Office of Insurance Regulation~~
19 ~~under chapter 651 as part of an application for a certificate~~
20 ~~of authority to operate a continuing care retirement community~~
21 ~~satisfies the requirements for the Department of Law~~
22 ~~Enforcement and Federal Bureau of Investigation background~~
23 ~~checks.~~

24 ~~(d) A provisional license may be granted to an~~
25 ~~applicant when each individual required by this section to~~
26 ~~undergo background screening has met the standards for the~~
27 ~~Department of Law Enforcement background check, but the agency~~
28 ~~has not yet received background screening results from the~~
29 ~~Federal Bureau of Investigation, or a request for a~~
30 ~~disqualification exemption has been submitted to the agency as~~
31 ~~set forth in chapter 435, but a response has not yet been~~

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

15 ~~(e) Each applicant must submit to the agency, with its~~
16 ~~application, a description and explanation of any exclusions,~~
17 ~~permanent suspensions, or terminations of the applicant from~~
18 ~~the Medicare or Medicaid programs. Proof of compliance with~~
19 ~~disclosure of ownership and control interest requirements of~~
20 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
21 ~~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's 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) An application for license renewal must contain~~
10 ~~the information required under paragraphs (e) and (f).~~

11 ~~(11) The applicant must furnish satisfactory proof of~~
12 ~~financial ability to operate and conduct the facility in~~
13 ~~accordance with the requirements of this part and all rules~~
14 ~~adopted under this part, and the agency shall establish~~
15 ~~standards for this purpose.~~

16 Section 168. Sections 400.963 and 400.965, Florida
17 Statutes, are repealed.

18 Section 169. Section 400.967, Florida Statutes, is
19 amended to read:

20 400.967 Rules and classification of deficiencies.--

21 (1) It is the intent of the Legislature that rules
22 adopted and enforced under this part and part II of chapter
23 408 include criteria by which a reasonable and consistent
24 quality of resident care may be ensured, the results of such
25 resident care can be demonstrated, and safe and sanitary
26 facilities can be provided.

27 (2) Pursuant to the intention of the Legislature, the
28 agency, in consultation with the Department of Children and
29 Family Services and the Department of Elderly Affairs, shall
30 adopt and enforce rules to administer this part, which shall
31 include reasonable and fair criteria governing:

1 (a) The location and construction of the facility;
2 including fire and life safety, plumbing, heating, cooling,
3 lighting, ventilation, and other housing conditions that will
4 ensure the health, safety, and comfort of residents. The
5 agency shall establish standards for facilities and equipment
6 to increase the extent to which new facilities and a new wing
7 or floor added to an existing facility after July 1, 2000, are
8 structurally capable of serving as shelters only for
9 residents, staff, and families of residents and staff, and
10 equipped to be self-supporting during and immediately
11 following disasters. The Agency for Health Care Administration
12 shall work with facilities licensed under this part and report
13 to the Governor and the Legislature by April 1, 2000, its
14 recommendations for cost-effective renovation standards to be
15 applied to existing facilities. In making such rules, the
16 agency shall be guided by criteria recommended by nationally
17 recognized, reputable professional groups and associations
18 having knowledge concerning such subject matters. The agency
19 shall update or revise such criteria as the need arises. All
20 facilities must comply with those lifesafety code requirements
21 and building code standards applicable at the time of approval
22 of their construction plans. The agency may require
23 alterations to a building if it determines that an existing
24 condition constitutes a distinct hazard to life, health, or
25 safety. The agency shall adopt fair and reasonable rules
26 setting forth conditions under which existing facilities
27 undergoing additions, alterations, conversions, renovations,
28 or repairs are required to comply with the most recent updated
29 or revised standards.

30 (b) The number and qualifications of all personnel,
31 including management, medical nursing, and other personnel,

1 having responsibility for any part of the care given to
2 residents.

3 (c) All sanitary conditions within the facility and
4 its surroundings, including water supply, sewage disposal,
5 food handling, and general hygiene, which will ensure the
6 health and comfort of residents.

7 (d) The equipment essential to the health and welfare
8 of the residents.

9 (e) A uniform accounting system.

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

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

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

4 ~~(h) 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 (3) In accordance with part II of chapter 408, the
9 agency shall adopt rules to provide that, when the criteria
10 established under this part and part II of chapter 408
11 ~~subsection (2)~~ are not met, such deficiencies shall be
12 classified according to the nature of the deficiency. The
13 agency shall indicate the classification on the face of the
14 notice of deficiencies as follows:

15 (a) Class I deficiencies are those which the agency
16 determines present an ~~and~~ imminent danger to the residents or
17 guests of the facility or a substantial probability that death
18 or serious physical harm would result therefrom. The condition
19 or practice constituting a class I violation must be abated or
20 eliminated immediately, unless a fixed period of time, as
21 determined by the agency, is required for correction.
22 Notwithstanding s. 400.121(2), a class I deficiency is subject
23 to a civil penalty in an amount not less than \$5,000 and not
24 exceeding \$10,000 for each deficiency. A fine may be levied
25 notwithstanding the correction of the deficiency.

26 (b) Class II deficiencies are those which the agency
27 determines have a direct or immediate relationship to the
28 health, safety, or security of the facility residents, other
29 than class I deficiencies. A class II deficiency is subject to
30 a civil penalty in an amount not less than \$1,000 and not
31 exceeding \$5,000 for each deficiency. A citation for a class

1 II deficiency shall specify the time within which the
2 deficiency must be corrected. If a class II deficiency is
3 corrected within the time specified, no civil penalty shall be
4 imposed, unless it is a repeated offense.

5 (c) Class III deficiencies are those which the agency
6 determines to have an indirect or potential relationship to
7 the health, safety, or security of the facility residents,
8 other than class I or class II deficiencies. A class III
9 deficiency is subject to a civil penalty of not less than \$500
10 and not exceeding \$1,000 for each deficiency. A citation for a
11 class III deficiency shall specify the time within which the
12 deficiency must be corrected. If a class III deficiency is
13 corrected within the time specified, no civil penalty shall be
14 imposed, unless it is a repeated offense.

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

18 (4)~~(5)~~ The agency shall approve or disapprove the
19 plans and specifications within 60 days after receipt of the
20 final plans and specifications. The agency may be granted one
21 15-day extension for the review period, if the secretary of
22 the agency so approves. If the agency fails to act within the
23 specified time, it is deemed to have approved the plans and
24 specifications. When the agency disapproves plans and
25 specifications, it must set forth in writing the reasons for
26 disapproval. Conferences and consultations may be provided as
27 necessary.

28 (5)~~(6)~~ The agency may charge an initial fee of \$2,000
29 for review of plans and construction on all projects, no part
30 of which is refundable. The agency may also collect a fee, not
31 to exceed 1 percent of the estimated construction cost or the

1 actual cost of review, whichever is less, for the portion of
2 the review which encompasses initial review through the
3 initial revised construction document review. The agency may
4 collect its actual costs on all subsequent portions of the
5 review and construction inspections. Initial fee payment must
6 accompany the initial submission of plans and specifications.
7 Any subsequent payment that is due is payable upon receipt of
8 the invoice from the agency. Notwithstanding any other
9 provision of law, all money received by the agency under this
10 section shall be deemed to be trust funds, to be held and
11 applied solely for the operations required under this section.

12 Section 170. Section 400.968, Florida Statutes, is
13 amended to read:

14 400.968 Right of entry; ~~protection of health, safety,~~
15 ~~and welfare.--~~

16 ~~(1)~~ Any designated officer or employee of the agency,
17 of the state, or of the local fire marshal may enter
18 unannounced the premises of any facility licensed under this
19 part in order to determine the state of compliance with this
20 part and the rules or standards in force under this part. The
21 right of entry and inspection also extends to any premises
22 that the agency has reason to believe are being operated or
23 maintained as a facility without a license; but such an entry
24 or inspection may not be made without the permission of the
25 owner or person in charge of the facility unless a warrant
26 that authorizes the entry is first obtained from the circuit
27 court. The warrant requirement extends only to a facility that
28 the agency has reason to believe is being operated or
29 maintained as a facility without a license. An application for
30 a license or renewal thereof which is made under this section
31 constitutes permission for, and acquiescence in, any entry or

1 inspection of the premises for which the license is sought, in
2 order to facilitate verification of the information submitted
3 in connection with the application; to discover, investigate,
4 and determine the existence of abuse or neglect; or to elicit,
5 receive, respond to, and resolve complaints. A current valid
6 license constitutes unconditional permission for, and
7 acquiescence in, any entry or inspection of the premises by
8 authorized personnel. The agency retains the right of entry
9 and inspection of facilities that have had a license revoked
10 or suspended within the previous 24 months, to ensure that the
11 facility is not operating unlawfully. However, before the
12 facility is entered, a statement of probable cause must be
13 filed with the director of the agency, who must approve or
14 disapprove the action within 48 hours.

15 ~~(2) The agency may institute injunctive proceedings in~~
16 ~~a court of competent jurisdiction for temporary or permanent~~
17 ~~relief to:~~

18 ~~(a) Enforce this section or any minimum standard,~~
19 ~~rule, or order issued pursuant thereto if the agency's effort~~
20 ~~to correct a violation through administrative fines has failed~~
21 ~~or when the violation materially affects the health, safety,~~
22 ~~or welfare of residents; or~~

23 ~~(b) Terminate the operation of a facility if a~~
24 ~~violation of this section or of any standard or rule adopted~~
25 ~~pursuant thereto exists which materially affects the health,~~
26 ~~safety, or welfare of residents.~~

27
28 ~~The Legislature recognizes that, in some instances, action is~~
29 ~~necessary to protect residents of facilities from immediately~~
30 ~~life threatening situations. If it appears by competent~~
31 ~~evidence or a sworn, substantiated affidavit that a temporary~~

1 ~~injunction should issue, the court, pending the determination~~
2 ~~on final hearing, shall enjoin operation of the facility.~~

3 ~~(3) The agency may impose an immediate moratorium on~~
4 ~~admissions to a facility when the agency determines that any~~
5 ~~condition in the facility presents a threat to the health,~~
6 ~~safety, or welfare of the residents in the facility. If a~~
7 ~~facility's license is denied, revoked, or suspended, the~~
8 ~~facility may be subject to the immediate imposition of a~~
9 ~~moratorium on admissions to run concurrently with licensure~~
10 ~~denial, revocation, or suspension.~~

11 Section 171. Subsection (1) of section 400.969,
12 Florida Statutes, is amended to read:

13 400.969 Violation of part; penalties.--

14 (1) In accordance with part II of chapter 408, and
15 except as provided in s. 400.967(3), a violation of any
16 provision of this part, part II of chapter 408, or applicable
17 ~~rules adopted by the agency under this part~~ is punishable by
18 payment of an administrative or civil penalty not to exceed
19 \$5,000.

20 Section 172. Section 400.980, Florida Statutes, is
21 amended to read:

22 400.980 Health care services pools.--

23 (1) As used in this section, the term:

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

26 (b) "Health care services pool" means any person,
27 firm, corporation, partnership, or association engaged for
28 hire in the business of providing temporary employment in
29 health care facilities, residential facilities, and agencies
30 for licensed, certified, or trained health care personnel
31 including, without limitation, nursing assistants, nurses'

1 aides, and orderlies. However, the term does not include
2 nursing registries, a facility licensed under chapter 400, a
3 health care services pool established within a health care
4 facility to provide services only within the confines of such
5 facility, or any individual contractor directly providing
6 temporary services to a health care facility without use or
7 benefit of a contracting agent.

8 (2) The requirements of part II of chapter 408 apply
9 to the provision of services that necessitate licensure or
10 registration pursuant to this part and part II of chapter 408
11 and to entities registered by or applying for such
12 registration from the Agency for Health Care Administration
13 pursuant to this part; however, an applicant for licensure is
14 exempt from s. 408.810(6)-(10). ~~Each person who operates a~~
15 ~~health care services pool must register each separate business~~
16 ~~location with the agency.~~ The agency shall adopt rules and
17 provide forms required for such registration and shall impose
18 a registration fee in an amount sufficient to cover the cost
19 of administering this section. In addition, the registrant
20 must provide the agency with any change of information
21 contained on the original registration application within 14
22 days prior to the change. ~~The agency may inspect the offices~~
23 ~~of any health care services pool at any reasonable time for~~
24 ~~the purpose of determining compliance with this section or the~~
25 ~~rules adopted under this section.~~

26 ~~(3) Each application for registration must include:~~

27 ~~(a) The name and address of any person who has an~~
28 ~~ownership interest in the business, and, in the case of a~~
29 ~~corporate owner, copies of the articles of incorporation,~~
30 ~~bylaws, and names and addresses of all officers and directors~~
31 ~~of the corporation.~~

1 ~~(b) Any other information required by the agency.~~
2 ~~(3)(4) Each applicant for registration must comply~~
3 ~~with 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 1 standards for screening set forth~~
7 ~~in chapter 435, of every individual who will have contact with~~
8 ~~patients. The agency shall require background screening of the~~
9 ~~managing employee or other similarly titled individual who is~~
10 ~~responsible for the operation of the entity, and of the~~
11 ~~financial officer or other similarly titled individual who is~~
12 ~~responsible for the financial operation of the entity,~~
13 ~~including billings for services in accordance with the level 2~~
14 ~~standards for background screening as set forth in chapter~~
15 ~~435.~~
16 ~~(b) The agency may require background screening of any~~
17 ~~other individual who is affiliated with the applicant if the~~
18 ~~agency has a reasonable basis for believing that he or she has~~
19 ~~been convicted of a crime or has committed any other offense~~
20 ~~prohibited under the level 2 standards for screening set forth~~
21 ~~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 paragraph (a).~~
27 ~~(d) A provisional registration 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. A standard registration may~~
2 ~~be granted to the applicant upon the agency's receipt of a~~
3 ~~report of the results of the Federal Bureau of Investigation~~
4 ~~background screening for each individual required by this~~
5 ~~section to undergo background screening which confirms that~~
6 ~~all standards have been met, or upon the granting of a~~
7 ~~disqualification exemption by the agency as set forth in~~
8 ~~chapter 435. Any other person who is required to undergo level~~
9 ~~2 background screening may serve in his or her capacity~~
10 ~~pending the agency's receipt of the report from the Federal~~
11 ~~Bureau of Investigation. However, the person may not continue~~
12 ~~to serve if the report indicates any violation of background~~
13 ~~screening standards and if a disqualification exemption has~~
14 ~~not been requested of and granted by the agency as set forth~~
15 ~~in chapter 435.~~

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

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

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

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

17 ~~(h) Failure to provide all required documentation~~
18 ~~within 30 days after a written request from the agency will~~
19 ~~result in denial of the application for registration.~~

20 ~~(i) The agency must take final action on an~~
21 ~~application for registration within 60 days after receipt of~~
22 ~~all required documentation.~~

23 ~~(j) The agency may deny, revoke, or suspend the~~
24 ~~registration of any applicant or registrant who:~~

25 ~~1. Has falsely represented a material fact in the~~
26 ~~application required by paragraph (c) or paragraph (f), or has~~
27 ~~omitted any material fact from the application required by~~
28 ~~paragraph (c) or paragraph (f); or~~

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

1 ~~3. Fails to comply with this section or applicable~~
2 ~~rules.~~

3 ~~4. Commits an intentional, reckless, or negligent act~~
4 ~~that materially affects the health or safety of a person~~
5 ~~receiving services.~~

6 (4)(5) It is a misdemeanor of the first degree,
7 punishable under s. 775.082 or s. 775.083, for any person
8 willfully, knowingly, or intentionally to:

9 (a) Fail, by false statement, misrepresentation,
10 impersonation, or other fraudulent means, to disclose in any
11 application for voluntary or paid employment a material fact
12 used in making a determination as to an applicant's
13 qualifications to be a contractor under this section;

14 (b) Operate or attempt to operate an entity registered
15 under this part with persons who do not meet the minimum
16 standards of chapter 435 as contained in this section; or

17 (c) Use information from the criminal records obtained
18 under this section for any purpose other than screening an
19 applicant for temporary employment as specified in this
20 section, or release such information to any other person for
21 any purpose other than screening for employment under this
22 section.

23 (5)(6) It is a felony of the third degree, punishable
24 under s. 775.082, s. 775.083, or s. 775.084, for any person
25 willfully, knowingly, or intentionally to use information from
26 the juvenile records of a person obtained under this section
27 for any purpose other than screening for employment under this
28 section.

29 ~~(7) It is unlawful for a person to offer or advertise~~
30 ~~services, as defined by rule, to the public without obtaining~~
31 ~~a certificate of registration from the Agency for Health Care~~

1 ~~Administration. It is unlawful for any holder of a certificate~~
2 ~~of registration to advertise or hold out to the public that he~~
3 ~~or she holds a certificate of registration for other than that~~
4 ~~for which he or she actually holds a certificate of~~
5 ~~registration. Any person who violates this subsection is~~
6 ~~subject to injunctive proceedings under s. 400.515.~~

7 ~~(8) Each registration shall be for a period of 2~~
8 ~~years. The application for renewal must be received by the~~
9 ~~agency at least 30 days before the expiration date of the~~
10 ~~registration. An application for a new registration is~~
11 ~~required within 30 days prior to the sale of a controlling~~
12 ~~interest in a health care services pool.~~

13 ~~(6)(9)~~ A health care services pool may not require an
14 employee to recruit new employees from persons employed at a
15 health care facility to which the health care services pool
16 employee is assigned. Nor shall a health care facility to
17 which employees of a health care services pool are assigned
18 recruit new employees from the health care services pool.

19 ~~(7)(10)~~ A health care services pool shall document
20 that each temporary employee provided to a health care
21 facility has met the licensing, certification, training, or
22 continuing education requirements, as established by the
23 appropriate regulatory agency, for the position in which he or
24 she will be working.

25 ~~(8)(11)~~ When referring persons for temporary
26 employment in health care facilities, a health care services
27 pool shall comply with all pertinent state and federal laws,
28 rules, and regulations relating to health, background
29 screening, and other qualifications required of persons
30 working in a facility of that type.

31

1 ~~(9)~~(12)(a) As a condition of registration and prior to
2 the issuance or renewal of a certificate of registration, a
3 health care services pool applicant must prove financial
4 responsibility to pay claims, and costs ancillary thereto,
5 arising out of the rendering of services or failure to render
6 services by the pool or by its employees in the course of
7 their employment with the pool. The agency shall promulgate
8 rules establishing minimum financial responsibility coverage
9 amounts which shall be adequate to pay potential claims and
10 costs ancillary thereto.

11 (b) Each health care services pool shall give written
12 notification to the agency within 20 days after any change in
13 the method of assuring financial responsibility or upon
14 cancellation or nonrenewal of professional liability
15 insurance. Unless the pool demonstrates that it is otherwise
16 in compliance with the requirements of this section, the
17 agency shall suspend the registration of the pool pursuant to
18 ss. 120.569 and 120.57. Any suspension under this section
19 shall remain in effect until the pool demonstrates compliance
20 with the requirements of this section.

21 (c) Proof of financial responsibility must be
22 demonstrated to the satisfaction of the agency, through one of
23 the following methods:

24 1. Establishing and maintaining an escrow account
25 consisting of cash or assets eligible for deposit in
26 accordance with s. 625.52;

27 2. Obtaining and maintaining an unexpired irrevocable
28 letter of credit established pursuant to chapter 675. Such
29 letters of credit shall be nontransferable and nonassignable
30 and shall be issued by any bank or savings association
31 organized and existing under the laws of this state or any

1 bank or savings association organized under the laws of the
2 United States that has its principal place of business in this
3 state or has a branch office which is authorized under the
4 laws of this state or of the United States to receive deposits
5 in this state; or

6 3. Obtaining and maintaining professional liability
7 coverage from one of the following:

8 a. An authorized insurer as defined under s. 624.09;

9 b. An eligible surplus lines insurer as defined under
10 s. 626.918(2);

11 c. A risk retention group or purchasing group as
12 defined under s. 627.942; or

13 d. A plan of self-insurance as provided in s. 627.357.

14 (d) If financial responsibility requirements are met
15 by maintaining an escrow account or letter of credit, as
16 provided in this section, upon the entry of an adverse final
17 judgment arising from a medical malpractice arbitration award
18 from a claim of medical malpractice either in contract or
19 tort, or from noncompliance with the terms of a settlement
20 agreement arising from a claim of medical malpractice either
21 in contract or tort, the financial institution holding the
22 escrow account or the letter of credit shall pay directly to
23 the claimant the entire amount of the judgment together with
24 all accrued interest or the amount maintained in the escrow
25 account or letter of credit as required by this section,
26 whichever is less, within 60 days after the date such judgment
27 became final and subject to execution, unless otherwise
28 mutually agreed to in writing by the parties. If timely
29 payment is not made, the agency shall suspend the registration
30 of the pool pursuant to procedures set forth by the agency
31 through rule. Nothing in this paragraph shall abrogate a

1 judgment debtor's obligation to satisfy the entire amount of
2 any judgment.

3 (e) Each health care services pool carrying
4 claims-made coverage must demonstrate proof of extended
5 reporting coverage through either tail or nose coverage, in
6 the event the policy is canceled, replaced, or not renewed.
7 Such extended coverage shall provide coverage for incidents
8 that occurred during the claims-made policy period but were
9 reported after the policy period.

10 (f) The financial responsibility requirements of this
11 section shall apply to claims for incidents that occur on or
12 after January 1, 1991, or the initial date of registration in
13 this state, whichever is later.

14 (g) Meeting the financial responsibility requirements
15 of this section must be established at the time of issuance or
16 renewal of a certificate of registration.

17 ~~(10)(13)~~ The agency shall adopt rules to implement
18 this section and part II of chapter 408, including rules
19 providing for the establishment of:

20 (a) Minimum standards for the operation and
21 administration of health care personnel pools, including
22 procedures for recordkeeping and personnel.

23 (b) In accordance with part II of chapter 408, fines
24 for the violation of this part, part II of chapter 408, or
25 applicable rules section in an amount not to exceed \$2,500 ~~and~~
26 ~~suspension or revocation of registration.~~

27 ~~(c) Disciplinary sanctions for failure to comply with~~
28 ~~this section or the rules adopted under this section.~~

29 Section 173. Subsections (3) and (4) of section
30 400.9905, Florida Statutes, are amended, and subsections (5)
31 and (6) are added to that section, to read:

1 400.9905 Definitions.--

2 (3) "Clinic" means an entity at which health care
3 services are provided to individuals and which tenders charges
4 for reimbursement for such services, including a mobile clinic
5 and a portable equipment provider. For purposes of this part,
6 the term does not include and the licensure requirements of
7 this part do not apply to:

8 (a) Entities licensed or registered by the state under
9 chapter 395; or entities licensed or registered by the state
10 and providing only health care services within the scope of
11 services authorized under their respective licenses granted
12 under ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter~~
13 ~~395~~, chapter 397, this chapter except part XIII, chapter 463,
14 chapter 465, chapter 466, chapter 478, part I of chapter 483
15 ~~480~~, chapter 484, or chapter 651, end-stage renal disease
16 providers authorized under 42 C.F.R. part 405, subpart U, or
17 providers certified under 42 C.F.R. part 485, subpart B or
18 subpart H, or any entity that provides neonatal or pediatric
19 hospital-based healthcare services by licensed practitioners
20 solely within a hospital licensed under chapter 395.

21 (b) Entities that own, directly or indirectly,
22 entities licensed or registered by the state pursuant to
23 chapter 395; or entities that own, directly or indirectly,
24 entities licensed or registered by the state and providing
25 only health care services within the scope of services
26 authorized pursuant to their respective licenses granted under
27 ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395~~,
28 chapter 397, this chapter except part XIII, chapter 463,
29 chapter 465, chapter 466, chapter 478, part I of chapter 483
30 ~~480~~, chapter 484, or chapter 651, end-stage renal disease
31 providers authorized under 42 C.F.R. part 405, subpart U, or

1 providers certified under 42 C.F.R. part 485, subpart B or
2 subpart H, or any entity that provides neonatal or pediatric
3 hospital-based healthcare services by licensed practitioners
4 solely within a hospital licensed under chapter 395.

5 (c) Entities that are owned, directly or indirectly,
6 by an entity licensed or registered by the state pursuant to
7 chapter 395; or entities that are owned, directly or
8 indirectly, by an entity licensed or registered by the state
9 and providing only health care services within the scope of
10 services authorized pursuant to their respective licenses
11 granted under ss. 383.30-383.335, chapter 390, chapter 394,
12 ~~chapter 395,~~ chapter 397, this chapter except part XIII,
13 chapter 463, chapter 465, chapter 466, chapter 478, part I of
14 chapter 483 480, chapter 484, or chapter 651, end-stage renal
15 disease providers authorized under 42 C.F.R. part 405, subpart
16 U, or providers certified under 42 C.F.R. part 485, subpart B
17 or subpart H, or any entity that provides neonatal or
18 pediatric hospital-based healthcare services by licensed
19 practitioners solely within a hospital licensed under chapter
20 395.

21 (d) Entities that are under common ownership, directly
22 or indirectly, with an entity licensed or registered by the
23 state pursuant to chapter 395; or entities that are under
24 common ownership, directly or indirectly, with an entity
25 licensed or registered by the state and providing only health
26 care services within the scope of services authorized pursuant
27 to its respective license granted under ss. 383.30-383.335,
28 chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this
29 chapter except part XIII, chapter 463, chapter 465, chapter
30 466, chapter 478, part I of chapter 483 480, chapter 484, or
31 chapter 651, end-stage renal disease providers authorized

1 under 42 C.F.R. part 405, subpart U, or providers certified
 2 under 42 C.F.R. part 485, subpart B or subpart H, or any
 3 entity that provides neonatal or pediatric hospital-based
 4 services by licensed practitioners solely within a hospital
 5 licensed under chapter 395.

6 (e) An entity that is exempt from federal taxation
 7 under 26 U.S.C. s. 501(c)(3) or s. 501(c)(4), and any
 8 community college or university clinic, and any entity owned
 9 or operated by federal or state government, including
 10 agencies, subdivisions, or municipalities thereof.

11 (f) A sole proprietorship, group practice,
 12 partnership, or corporation that provides health care services
 13 by physicians covered by s. 627.419, that is directly
 14 supervised by one or more of such physicians, and that is
 15 wholly owned by one or more of those physicians or by a
 16 physician and the spouse, parent, child, or sibling of that
 17 physician.

18 (g)~~(f)~~ A sole proprietorship, group practice,
 19 partnership, or corporation that provides health care services
 20 by licensed health care practitioners under chapter 457,
 21 chapter 458, chapter 459, chapter 460, chapter 461, chapter
 22 462, chapter 463, chapter 466, chapter 467, chapter 480,
 23 chapter 484, chapter 486, chapter 490, chapter 491, or part I,
 24 part III, part X, part XIII, or part XIV of chapter 468, or s.
 25 464.012, which are wholly owned by one or more ~~a~~ licensed
 26 health care practitioners ~~practitioner~~, or the licensed health
 27 care practitioners set forth in this paragraph ~~practitioner~~
 28 and the spouse, parent, ~~or~~ child, or sibling of a licensed
 29 health care practitioner, so long as one of the owners who is
 30 a licensed health care practitioner is supervising the
 31 services performed therein and is legally responsible for the

1 entity's compliance with all federal and state laws. However,
2 a health care practitioner may not supervise services beyond
3 the scope of the practitioner's license, except that, for the
4 purposes of this part, a clinic owned by a licensee in s.
5 456.053(3)(b) that provides only services authorized pursuant
6 to s. 456.053(3)(b) may be supervised by a licensee specified
7 in s. 456.053(3)(b).

8 ~~(h)(g)~~ Clinical facilities affiliated with an
9 accredited medical school at which training is provided for
10 medical students, residents, or fellows.

11 (i) Entities that provide only oncology or radiation
12 therapy services by physicians licensed under chapter 458 or
13 459.

14 (4) "Medical director" means a physician who is
15 employed or under contract with a clinic and who maintains a
16 full and unencumbered physician license in accordance with
17 chapter 458, chapter 459, chapter 460, or chapter 461.
18 However, if the clinic does not provide services pursuant to
19 the respective physician practice acts listed in this
20 subsection, it is limited to providing health care services
21 pursuant to chapter 457, chapter 484, chapter 486, chapter
22 490, or chapter 491 or part I, part III, part X, part XIII, or
23 part XIV of chapter 468, the clinic may appoint a
24 Florida-licensed health care practitioner who does not provide
25 services pursuant to the respective physician practice acts
26 listed in this subsection licensed under that chapter to serve
27 as a clinic director who is responsible for the clinic's
28 activities. A health care practitioner may not serve as the
29 clinic director if the services provided at the clinic are
30 beyond the scope of that practitioner's license, except that a
31 licensee specified in s. 456.053(3)(b) that provides only

1 services authorized pursuant to s. 456.053(3)(b) may serve as
2 clinic director of an entity providing services as specified
3 in s. 456.053(3)(b).

4 (5) "Mobile clinic" means a movable or detached
5 self-contained health care unit within or from which direct
6 health care services are provided to individuals and that
7 otherwise meets the definition of a clinic in subsection (3).

8 (6) "Portable equipment provider" means an entity that
9 contracts with or employs persons to provide portable
10 equipment to multiple locations performing treatment or
11 diagnostic testing of individuals, that bills third-party
12 payors for those services, and that otherwise meets the
13 definition of a clinic in subsection (3).

14 Section 174. The creation of paragraph 400.9905(3)(i),
15 Florida Statutes, by this act is intended to clarify the
16 legislative intent of this provision as it existed at the time
17 the provision initially took effect as section 456.0375(1)(b),
18 Florida Statutes, and paragraph 400.9905(3)(i), Florida
19 Statutes, as created by this act, shall operate retroactively
20 to October 1, 2001. Nothing in this section shall be construed
21 as amending, modifying, limiting, or otherwise affecting in
22 any way the legislative intent, scope, terms, prohibition, or
23 requirements of section 456.053, Florida Statutes.

24 Section 175. Subsections (1), (2), and (3) and
25 paragraphs (a) and (b) of subsection (7) of section 400.991,
26 Florida Statutes, are amended to read:

27 400.991 License requirements; background screenings;
28 prohibitions.--

29 (1)(a) Each clinic, as defined in s. 400.9905, must be
30 licensed and shall at all times maintain a valid license with
31 the agency. Each clinic location shall be licensed separately

1 regardless of whether the clinic is operated under the same
2 business name or management as another clinic.

3 (b) Each mobile clinic must obtain a separate health
4 care clinic license and clinics must provide to the agency, at
5 least quarterly, ~~its their~~ projected street location locations
6 to enable the agency to locate and inspect such clinic
7 ~~clinics~~. A portable equipment provider must obtain a health
8 care clinic license for a single administrative office and is
9 not required to submit quarterly projected street locations.

10 (2) The initial clinic license application shall be
11 filed with the agency by all clinics, as defined in s.
12 400.9905, on or before ~~July March~~ 1, 2004. A clinic license
13 must be renewed biennially.

14 (3) Applicants that submit an application on or before
15 ~~July March~~ 1, 2004, which meets all requirements for initial
16 licensure as specified in this section shall receive a
17 temporary license until the completion of an initial
18 inspection verifying that the applicant meets all requirements
19 in rules authorized by s. 400.9925. However, a clinic engaged
20 in magnetic resonance imaging services may not receive a
21 temporary license unless it presents evidence satisfactory to
22 the agency that such clinic is making a good faith effort and
23 substantial progress in seeking accreditation required under
24 s. 400.9935.

25 (7) Each applicant for licensure shall comply with the
26 following requirements:

27 (a) As used in this subsection, the term "applicant"
28 means individuals owning or controlling, directly or
29 indirectly, 5 percent or more of an interest in a clinic; the
30 medical or clinic director, or a similarly titled person who
31 is responsible for the day-to-day operation of the licensed

1 clinic; the financial officer or similarly titled individual
2 who is responsible for the financial operation of the clinic;
3 and licensed health care practitioners ~~medical providers~~ at
4 the clinic.

5 (b) Upon receipt of a completed, signed, and dated
6 application, the agency shall require background screening of
7 the applicant, in accordance with the level 2 standards for
8 screening set forth in chapter 435. Proof of compliance with
9 the level 2 background screening requirements of chapter 435
10 which has been submitted within the previous 5 years in
11 compliance with any other health care licensure requirements
12 of this state is acceptable in fulfillment of this paragraph.
13 Applicants who own less than 10 percent of a health care
14 clinic are not required to submit fingerprints under this
15 section.

16 Section 176. Subsections (9) and (11) of section
17 400.9935, Florida Statutes, are amended to read:

18 400.9935 Clinic responsibilities.--

19 (9) Any person or entity providing health care
20 services which is not a clinic, as defined under s. 400.9905,
21 may voluntarily apply for a certificate of exemption from
22 licensure under its exempt status with the agency on a form
23 that sets forth its name or names and addresses, a statement
24 of the reasons why it cannot be defined as a clinic, and other
25 information deemed necessary by the agency. An exemption is
26 not transferable. The agency may charge an applicant for a
27 certificate of exemption \$100 or the actual cost, whichever is
28 less, for processing the certificate.

29 (11)(a) Each clinic engaged in magnetic resonance
30 imaging services must be accredited by the Joint Commission on
31 Accreditation of Healthcare Organizations, the American

1 College of Radiology, or the Accreditation Association for
2 Ambulatory Health Care, within 1 year after licensure.
3 However, a clinic may request a single, 6-month extension if
4 it provides evidence to the agency establishing that, for good
5 cause shown, such clinic can not be accredited within 1 year
6 after licensure, and that such accreditation will be completed
7 within the 6-month extension. After obtaining accreditation as
8 required by this subsection, each such clinic must maintain
9 accreditation as a condition of renewal of its license.

10 (b) The agency may ~~deny disallow~~ the application or
11 revoke the license of any entity formed for the purpose of
12 avoiding compliance with the accreditation provisions of this
13 subsection and whose principals were previously principals of
14 an entity that was unable to meet the accreditation
15 requirements within the specified timeframes. The agency may
16 adopt rules as to the accreditation of magnetic resonance
17 imaging clinics.

18 Section 177. Subsections (1) and (3) of section
19 400.995, Florida Statutes, are amended, and subsection (10) is
20 added to said section, to read:

21 400.995 Agency administrative penalties.--

22 (1) The agency may deny the application for a license
23 renewal, revoke or suspend the license, and impose
24 administrative fines ~~penalties against clinics~~ of up to \$5,000
25 per violation for violations of the requirements of this part
26 or rules of the agency. In determining if a penalty is to be
27 imposed and in fixing the amount of the fine, the agency shall
28 consider the following factors:

29 (a) The gravity of the violation, including the
30 probability that death or serious physical or emotional harm
31 to a patient will result or has resulted, the severity of the

1 action or potential harm, and the extent to which the
2 provisions of the applicable laws or rules were violated.

3 (b) Actions taken by the owner, medical director, or
4 clinic director to correct violations.

5 (c) Any previous violations.

6 (d) The financial benefit to the clinic of committing
7 or continuing the violation.

8 (3) Any action taken to correct a violation shall be
9 documented in writing by the owner, medical director, or
10 clinic director of the clinic and verified through followup
11 visits by agency personnel. The agency may impose a fine and,
12 in the case of an owner-operated clinic, revoke or deny a
13 clinic's license when a clinic medical director or clinic
14 director ~~knowingly fraudulently~~ misrepresents actions taken to
15 correct a violation.

16 (10) If the agency issues a notice of intent to deny a
17 license application after a temporary license has been issued
18 pursuant to s. 400.991(3), the temporary license shall expire
19 on the date of the notice and may not be extended during any
20 proceeding for administrative or judicial review pursuant to
21 chapter 120.

22 Section 178. The agency shall refund 90 percent of the
23 license application fee to applicants that submitted their
24 health care clinic licensure fees and applications but were
25 subsequently exempted from licensure by this act.

26 Section 179. Any person or entity defined as a clinic
27 under section 400.9905, Florida Statutes, shall not be in
28 violation of part XIII of chapter 400, Florida Statutes, due
29 to failure to apply for a clinic license by March 1, 2004, as
30 previously required by section 400.991, Florida Statutes.
31 Payment to any such person or entity by an insurer or other

1 person liable for payment to such person or entity may not be
2 denied on the grounds that the person or entity failed to
3 apply for or obtain a clinic license before March 1, 2004.

4 Section 180. Sections 173 through 179 shall take
5 effect upon becoming a law, and section 174 shall apply
6 retroactively to March 1, 2004.

7 Section 181. Paragraph (u) is added to subsection (3)
8 of section 408.036, Florida Statutes, to read:

9 408.036 Projects subject to review; exemptions.--

10 (3) EXEMPTIONS.--Upon request, the following projects
11 are subject to exemption from the provisions of subsection
12 (1):

13 (u) For the addition of skilled nursing facility beds
14 as provided in this paragraph. Notwithstanding the moratorium
15 on community nursing home beds authorized in chapter 2001-45,
16 Laws of Florida, the agency may grant an exemption for:

17 1. The addition of skilled nursing facility beds
18 licensed under part II of chapter 400 to a licensed skilled
19 nursing facility located in a county having up to 50,000
20 residents, in a number that may not exceed 10 total beds or 10
21 percent of the licensed capacity of the facility, whichever is
22 greater, if:

23 a. Occupancy for the prior 12-month period at the
24 facility or in the applicable subdistrict met or exceeded 94
25 percent, and the facility has had no confirmed complaints or a
26 conditional license for the prior 30-month period; or

27 b. For a facility that has been licensed for less than
28 24 months, facility occupancy exceeded 94 percent for the most
29 recent 6-month period and the facility has not had a confirmed
30 complaint or a conditional license since its initial
31 licensure.

1 2. The new construction of a skilled nursing facility
2 with up to 10 beds in a county having up to 50,000 residents
3 if there are no licensed skilled nursing facility beds in that
4 county.

5 Section 182. Section 408.831, Florida Statutes, is
6 amended to read:

7 408.831 Denial, ~~suspension~~, or revocation of a
8 license, registration, certificate, or application.--

9 (1) In addition to any other remedies provided by law,
10 the agency may deny each application or ~~suspend or~~ revoke each
11 license, registration, or certificate of entities regulated or
12 licensed by it:

13 (a) If the applicant, licensee, registrant, or
14 certificateholder, or, in the case of a corporation,
15 partnership, or other business entity, if any affiliated
16 business entity, officer, director, agent, or managing
17 employee of that business entity or any affiliated person,
18 partner, or shareholder having an ownership interest equal to
19 5 percent or greater in that business entity, has failed to
20 pay all outstanding fines, liens, or overpayments assessed by
21 final order of the agency or final order of the Centers for
22 Medicare and Medicaid Services, not subject to further appeal,
23 unless a repayment plan is approved by the agency; or

24 (b) For failure to comply with any repayment plan.

25 (2) In reviewing any application requesting a change
26 of ownership or change of the licensee, registrant, or
27 certificateholder, the transferor shall, prior to agency
28 approval of the change, repay or make arrangements to repay
29 any amounts owed to the agency. Should the transferor fail to
30 repay or make arrangements to repay the amounts owed to the
31 agency, the issuance of a license, registration, or

1 certificate to the transferee shall be delayed until repayment
2 or until arrangements for repayment are made.

3 (3) This section provides standards of enforcement
4 applicable to all entities licensed or regulated by the Agency
5 for Health Care Administration. This section controls over any
6 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391,
7 393, 394, 395, 400, 408, 468, 483, ~~and 641, and 765~~ or rules
8 adopted pursuant to those chapters.

9 Section 183. Subsections (9) and (10) of section
10 440.102, Florida Statutes, are amended to read:

11 440.102 Drug-free workplace program requirements.--The
12 following provisions apply to a drug-free workplace program
13 implemented pursuant to law or to rules adopted by the Agency
14 for Health Care Administration:

15 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--

16 (a) 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.

22 ~~(b)(a)~~ A laboratory may analyze initial or
23 confirmation test specimens only if:

24 1. The laboratory obtains a license under the
25 requirements of part II of chapter 408 and s. 112.0455(17).
26 Each applicant for licensure must comply with all requirements
27 of part II of chapter 408, with the exception of s.
28 ~~408.810(5)-(10). is licensed and approved by the Agency for~~
29 ~~Health Care Administration using criteria established by the~~
30 ~~United States Department of Health and Human Services as~~
31 ~~general guidelines for modeling the state drug testing program~~

1 ~~pursuant to this section or the laboratory is certified by the~~
2 ~~United States Department of Health and Human Services.~~

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

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

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

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

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

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

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

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

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

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

31

1 4. The type of tests conducted for both initial tests
2 and confirmation tests and the minimum cutoff levels of the
3 tests.

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

7
8 A report must not disclose the presence or absence of any drug
9 other than a specific drug and its metabolites listed pursuant
10 to this section.

11 ~~(d)(e)~~ The laboratory shall submit to the Agency for
12 Health Care Administration a monthly report with statistical
13 information regarding the testing of employees and job
14 applicants. The report must include information on the methods
15 of analysis conducted, the drugs tested for, the number of
16 positive and negative results for both initial tests and
17 confirmation tests, and any other information deemed
18 appropriate by the Agency for Health Care Administration. A
19 monthly report must not identify specific employees or job
20 applicants.

21 (10) RULES.--The Agency for Health Care Administration
22 shall adopt rules pursuant to s. 112.0455, part II of chapter
23 408, and criteria established by the United States Department
24 of Health and Human Services as general guidelines for
25 modeling drug-free workplace laboratories ~~the state~~
26 ~~drug testing program~~, concerning, but not limited to:

27 (a) Standards for licensing drug-testing laboratories
28 and denial ~~suspension~~ and revocation of such licenses.

29 (b) Urine, hair, blood, and other body specimens and
30 minimum specimen amounts that are appropriate for drug
31 testing.

1 (c) Methods of analysis and procedures to ensure
2 reliable drug-testing results, including standards for initial
3 tests and confirmation tests.

4 (d) Minimum cutoff detection levels for each drug or
5 metabolites of such drug for the purposes of determining a
6 positive test result.

7 (e) Chain-of-custody procedures to ensure proper
8 identification, labeling, and handling of specimens tested.

9 (f) Retention, storage, and transportation procedures
10 to ensure reliable results on confirmation tests and retests.

11 Section 184. Subsection (2) of section 468.711,
12 Florida Statutes, is amended to read:

13 468.711 Renewal of license; continuing education.--

14 (2) The board may, by rule, prescribe continuing
15 education requirements, not to exceed 24 hours biennially.
16 The criteria for continuing education shall be approved by the
17 board and shall include 4 hours in ~~standard first aid and~~
18 cardiovascular pulmonary resuscitation from the American Red
19 Cross or equivalent training as determined by the board.

20 Section 185. Section 468.723, Florida Statutes, is
21 amended to read:

22 468.723 Exemptions.--Nothing in this part shall be
23 construed as preventing or restricting:

24 (1) The professional practice of a licensee of the
25 department who is acting within the scope of such practice.

26 (2) A student athletic trainer acting under the direct
27 supervision of a licensed athletic trainer.

28 ~~(3) A person employed as a teacher apprentice trainer~~
29 ~~I, a teacher apprentice trainer II, or a teacher athletic~~
30 ~~trainer under s. 1012.46.~~

31

1 ~~(3)~~(4) A person from administering standard first aid
2 treatment to an athlete.

3 ~~(4)~~(5) A person licensed under chapter 548, provided
4 such person is acting within the scope of such license.

5 ~~(5)~~(6) A person providing personal training
6 instruction for exercise, aerobics, or weightlifting, if the
7 person does not represent himself or herself as able to
8 provide "athletic trainer" services and if any recognition or
9 treatment of injuries is limited to the provision of first
10 aid.

11 Section 186. Section 1012.46, Florida Statutes, is
12 amended to read:

13 1012.46 Athletic trainers.--

14 (1) School districts may establish and implement an
15 athletic injuries prevention and treatment program. Central to
16 this program should be the employment and availability of
17 persons trained in the prevention and treatment of physical
18 injuries which may occur during athletic activities. The
19 program should reflect opportunities for progressive
20 advancement and compensation in employment as provided in
21 subsection (2) and meet certain other minimum standards
22 developed by the Department of Education. The goal of the
23 Legislature is to have school districts employ and have
24 available a full-time ~~teacher~~ athletic trainer in each high
25 school in the state.

26 (2) To the extent practicable, a school district
27 program should include the following employment classification
28 and advancement scheme:

29 (a) First responder.--To qualify as a first responder,
30 a person must possess a professional, temporary, part-time,
31 adjunct, or substitute certificate pursuant to s. 1012.56, be

1 certified in cardiopulmonary resuscitation, first aid, and
2 have 15 semester hours in courses such as care and prevention
3 of athletic injuries, anatomy, physiology, nutrition,
4 counseling, and other similar courses approved by the
5 Commissioner of Education. This person may only administer
6 first aid and similar care and may not hold himself or herself
7 out to the school district or public as an athletic trainer
8 pursuant to part XIII of chapter 468.

9 (b) ~~Teacher~~ Athletic trainer.--To qualify as an a
10 ~~teacher~~ athletic trainer, a person must be licensed as
11 required by part XIII of chapter 468 and may be used by the
12 school district as possess a professional, temporary,
13 part-time, adjunct, or substitute teacher provided such person
14 holds a certificate pursuant to s. 1012.35, s. 1012.56 or s.
15 1012.57, and be licensed as required by part XIII of chapter
16 468.

17 Section 187. Subsection (3) is added to section
18 483.035, Florida Statutes, to read:

19 483.035 Clinical laboratories operated by
20 practitioners for exclusive use; licensure and regulation.--

21 (3) 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 by or applying for such licensure from the
25 Agency for Health Care Administration pursuant to this part;
26 however, an applicant for licensure is exempt from s.
27 408.810(5)-(10).

28 Section 188. Subsection (1) of section 483.051,
29 Florida Statutes, is amended to read:

30
31

1 483.051 Powers and duties of the agency.--The agency
2 shall adopt rules to implement this part, which rules must
3 include, but are not limited to, the following:

4 (1) LICENSING; QUALIFICATIONS.--The agency shall
5 provide for biennial licensure of all clinical laboratories
6 meeting the requirements of this part and shall prescribe the
7 qualifications necessary for such licensure. ~~A license issued~~
8 ~~for operating a clinical laboratory, unless sooner suspended~~
9 ~~or revoked, expires on the date set forth by the agency on the~~
10 ~~face of the license.~~

11 Section 189. Section 483.061, Florida Statutes, is
12 amended to read:

13 483.061 Inspection of clinical laboratories.--

14 (1) The agency shall ensure that each clinical
15 laboratory subject to this part is inspected either onsite or
16 offsite when deemed necessary by the agency, but at least
17 every 2 years, for the purpose of evaluating the operation,
18 supervision, and procedures of the facility to ensure
19 compliance with this part. Collection stations and branch
20 offices may be inspected either onsite or offsite, when deemed
21 necessary by the agency. ~~The agency may conduct or cause to be~~
22 ~~conducted the following announced or unannounced inspections~~
23 ~~at any reasonable time:~~

24 ~~(a) An inspection conducted at the direction of the~~
25 ~~federal Health Care Financing Administration.~~

26 ~~(b) A licensure inspection.~~

27 ~~(c) A validation inspection.~~

28 ~~(d) A complaint investigation, including a full~~
29 ~~licensure investigation with a review of all licensure~~
30 ~~standards as outlined in rule. Complaints received by the~~
31 ~~agency from individuals, organizations, or other sources are~~

1 ~~subject to review and investigation by the agency.~~ If a
2 complaint has been filed against a laboratory or if a
3 laboratory has a substantial licensure deficiency, the agency
4 may inspect the laboratory annually or as the agency considers
5 necessary.

6
7 However, for laboratories operated under s. 483.035, biennial
8 licensure inspections shall be scheduled so as to cause the
9 least disruption to the practitioner's scheduled patients.

10 ~~(2) The right of entry and inspection is extended to~~
11 ~~any premises that is maintained as a laboratory without a~~
12 ~~license, but such entry or inspection may not be made without~~
13 ~~the permission of the owner or person in charge of the~~
14 ~~laboratory, unless an inspection warrant as defined in s.~~
15 ~~933.20 is first obtained.~~

16 ~~(2)(3)~~ The agency may ~~shall~~ inspect an out-of-state
17 clinical laboratory under this section at the expense of the
18 out-of-state clinical laboratory to determine whether the
19 laboratory meets the requirements of this part and part II of
20 chapter 408.

21 ~~(3)(4)~~ The agency shall accept, in lieu of its own
22 periodic inspections for licensure, the survey of or
23 inspection by private accrediting organizations that perform
24 inspections of clinical laboratories accredited by such
25 organizations, including postinspection activities required by
26 the agency.

27 (a) The agency shall accept inspections performed by
28 such organizations if the accreditation is not provisional, if
29 such organizations perform postinspection activities required
30 by the agency and provide the agency with all necessary
31 inspection and postinspection reports and information

1 necessary for enforcement, if such organizations apply
2 standards equal to or exceeding standards established and
3 approved by the agency, and if such accrediting organizations
4 are approved by the federal Health Care Financing
5 Administration to perform such inspections.

6 (b) The agency may conduct complaint investigations
7 made against laboratories inspected by accrediting
8 organizations.

9 (c) The agency may conduct sample validation
10 inspections of laboratories inspected by accrediting
11 organizations to evaluate the accreditation process used by an
12 accrediting organization.

13 (d) The agency may conduct a full inspection if an
14 accrediting survey has not been conducted within the previous
15 24 months, and the laboratory must pay the appropriate
16 inspection fee under s. 483.172.

17 (e) The agency shall develop, and adopt, by rule,
18 criteria for accepting inspection and postinspection reports
19 of accrediting organizations in lieu of conducting a state
20 licensure inspection.

21 Section 190. Section 483.091, Florida Statutes, is
22 amended to read:

23 483.091 Clinical laboratory license.--~~A person may not~~
24 ~~conduct, maintain, or operate a clinical laboratory in this~~
25 ~~state, except a laboratory that is exempt under s. 483.031,~~
26 ~~unless the clinical laboratory has obtained a license from the~~
27 ~~agency.~~ A clinical laboratory may not send a specimen drawn
28 within this state to any clinical laboratory outside the state
29 for examination unless the out-of-state laboratory has
30 obtained a license from the agency. ~~A license is valid only~~
31 ~~for the person or persons to whom it is issued and may not be~~

1 ~~sold, assigned, or transferred, voluntarily or involuntarily,~~
2 ~~and is not valid for any premises other than those for which~~
3 ~~the license is issued. However,~~ A new license may be secured
4 for a ~~the~~ new location before the actual change, if the
5 contemplated change complies with this part and the rules
6 adopted under this part. ~~Application for a new clinical~~
7 ~~laboratory license must be made 60 days before a change in the~~
8 ~~ownership of the clinical laboratory.~~

9 Section 191. Section 483.101, Florida Statutes, is
10 amended to read:

11 483.101 Application for clinical laboratory license.--

12 ~~(1) An application for a clinical laboratory license~~
13 ~~must be made under oath by the owner or director of the~~
14 ~~clinical laboratory or by the public official responsible for~~
15 ~~operating a state, municipal, or county clinical laboratory or~~
16 ~~institution that contains a clinical laboratory, upon forms~~
17 ~~provided by the agency.~~

18 ~~(2) Each applicant for licensure must comply with the~~
19 ~~following requirements:~~

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

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 may be~~
9 ~~accepted in lieu of this submission.~~

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

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

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

4 ~~(h) The agency may deny or revoke 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 ~~(3) A license must be issued authorizing the~~
16 ~~performance of one or more clinical laboratory procedures or~~
17 ~~one or more tests on each specialty or subspecialty. A~~
18 ~~separate license is required of all laboratories maintained on~~
19 ~~separate premises even if the laboratories are operated under~~
20 ~~the same management. Upon receipt of a request for an~~
21 ~~application for a clinical laboratory license, the agency~~
22 ~~shall provide to the applicant a copy of the rules relating to~~
23 ~~licensure and operations applicable to the laboratory for~~
24 ~~which licensure is sought.~~

25 Section 192. Section 483.111, Florida Statutes, is
26 amended to read:

27 483.111 Limitations on licensure.--A license may be
28 issued to a clinical laboratory to perform only those clinical
29 laboratory procedures and tests that are within the
30 specialties or subspecialties in which the clinical laboratory
31 personnel are qualified. A license may not be issued unless

1 the agency determines that the clinical laboratory is
2 adequately staffed and equipped to operate in conformity with
3 the requirements of this part, part II of chapter 408, and
4 applicable the rules ~~adopted under this part~~.

5 Section 193. Section 483.131, Florida Statutes, is
6 repealed.

7 Section 194. Section 483.172, Florida Statutes, is
8 amended to read:

9 483.172 License fees.--

10 (1) 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. The
13 ~~agency shall collect fees for all licenses issued under this~~
14 ~~part. Each fee is due at the time of application and must be~~
15 ~~payable to the agency to be deposited in the Health Care Trust~~
16 ~~Fund administered by the agency.~~

17 (2) The biennial license fee schedule is as follows,
18 unless modified by rule:

19 (a) If a laboratory performs not more than 2,000 tests
20 annually, the fee is \$400.

21 (b) If a laboratory performs not more than 3
22 categories of procedures with a total annual volume of more
23 than 2,000 but no more than 10,000 tests, the license fee is
24 \$965.

25 (c) If a laboratory performs at least 4 categories of
26 procedures with a total annual volume of not more than 10,000
27 tests, the license fee is \$1,294.

28 (d) If a laboratory performs not more than 3
29 categories of procedures with a total annual volume of more
30 than 10,000 but not more than 25,000 tests, the license fee is
31 \$1,592.

1 (e) If a laboratory performs at least 4 categories of
2 procedures with a total annual volume of more than 10,000 but
3 not more than 25,000 tests, the license fee is \$2,103.

4 (f) If a laboratory performs a total of more than
5 25,000 but not more than 50,000 tests annually, the license
6 fee is \$2,364.

7 (g) If a laboratory performs a total of more than
8 50,000 but not more than 75,000 tests annually, the license
9 fee is \$2,625.

10 (h) If a laboratory performs a total of more than
11 75,000 but not more than 100,000 tests annually, the license
12 fee is \$2,886.

13 (i) If a laboratory performs a total of more than
14 100,000 but not more than 500,000 tests annually, the license
15 fee is \$3,397.

16 (j) If a laboratory performs a total of more than
17 500,000 but not more than 1 million tests annually, the
18 license fee is \$3,658.

19 (k) If a laboratory performs a total of more than 1
20 million tests annually, the license fee is \$3,919.

21 (3) The agency shall assess a biennial fee of \$100 for
22 a certificate of exemption and a \$100 license fee for
23 facilities surveyed by an approved accrediting organization.

24 Section 195. Section 483.201, Florida Statutes, is
25 amended to read:

26 483.201 Grounds for disciplinary action against
27 clinical laboratories.--In addition to the requirements of
28 part II of chapter 408, the following acts constitute grounds
29 for which a disciplinary action specified in s. 483.221 may be
30 taken against a clinical laboratory:
31

1 ~~(1)~~ Making a fraudulent statement on an application
2 for a clinical laboratory license or any other document
3 required by the agency.

4 ~~(1)~~~~(2)~~ Permitting unauthorized persons to perform
5 technical procedures or to issue reports.

6 ~~(2)~~~~(3)~~ Demonstrating incompetence or making consistent
7 errors in the performance of clinical laboratory examinations
8 and procedures or erroneous reporting.

9 ~~(3)~~~~(4)~~ Performing a test and rendering a report
10 thereon to a person not authorized by law to receive such
11 services.

12 ~~(4)~~~~(5)~~ Knowingly having professional connection with
13 or knowingly lending the use of the name of the licensed
14 clinical laboratory or its director to an unlicensed clinical
15 laboratory.

16 ~~(5)~~~~(6)~~ Violating or aiding and abetting in the
17 violation of any provision of this part or the rules adopted
18 under this part.

19 ~~(6)~~~~(7)~~ Failing to file any report required by the
20 provisions of this part or the rules adopted under this part.

21 ~~(7)~~~~(8)~~ Reporting a test result for a clinical specimen
22 if the test was not performed on the clinical specimen.

23 ~~(8)~~~~(9)~~ Performing and reporting tests in a specialty
24 or subspecialty in which the laboratory is not licensed.

25 ~~(9)~~~~(10)~~ Knowingly advertising false services or
26 credentials.

27 ~~(10)~~~~(11)~~ Failing to correct deficiencies within the
28 time required by the agency.

29 Section 196. Section 483.221, Florida Statutes, is
30 amended to read:

31 483.221 Administrative finer ~~penalties~~.--

1 (1)(a) In accordance with part II of chapter 408, the
2 agency may ~~deny, suspend, revoke, annul, limit, or deny~~
3 ~~renewal of a license or~~ impose an administrative fine, not to
4 exceed \$1,000 per violation, for the violation of any
5 provision of this part or rules adopted under this part. ~~Each~~
6 ~~day of violation constitutes a separate violation and is~~
7 ~~subject to a separate fine.~~

8 (2)(b) In determining the penalty to be imposed for a
9 violation, as provided in subsection (1) ~~paragraph (a)~~, the
10 following factors must be considered:

11 (a)1. The severity of the violation, including the
12 probability that death or serious harm to the health or safety
13 of any person will result or has resulted; the severity of the
14 actual or potential harm; and the extent to which the
15 provisions of this part were violated.

16 (b)2. Actions taken by the licensee to correct the
17 violation or to remedy complaints.

18 (c)3. Any previous violation by the licensee.

19 (d)4. The financial benefit to the licensee of
20 committing or continuing the violation.

21 (c) ~~All amounts collected under this section must be~~
22 ~~deposited into the Health Care Trust Fund administered by the~~
23 ~~agency.~~

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

29 Section 197. Section 483.23, Florida Statutes, is
30 amended to read:

31 483.23 Offenses; criminal penalties.--

1 (1)(a) It is unlawful for any person to:

2 ~~1. Operate, maintain, direct, or engage in the~~
3 ~~business of operating a clinical laboratory unless she or he~~
4 ~~has obtained a clinical laboratory license from the agency or~~
5 ~~is exempt under s. 483.031.~~

6 ~~1.2.~~ Conduct, maintain, or operate a clinical
7 laboratory, other than an exempt laboratory or a laboratory
8 operated under s. 483.035, unless the clinical laboratory is
9 under the direct and responsible supervision and direction of
10 a person licensed under part III of this chapter.

11 ~~2.3.~~ Allow any person other than an individual
12 licensed under part III of this chapter to perform clinical
13 laboratory procedures, except in the operation of a laboratory
14 exempt under s. 483.031 or a laboratory operated under s.
15 483.035.

16 ~~3.4.~~ Violate or aid and abet in the violation of any
17 provision of this part or the rules adopted under this part.

18 (b) The performance of any act specified in paragraph
19 (a) constitutes a misdemeanor of the second degree, punishable
20 as provided in s. 775.082 or s. 775.083.

21 (2) Any use or attempted use of a forged license under
22 this part or part IV ~~III~~ of this chapter constitutes the crime
23 of forgery.

24 Section 198. Section 483.25, Florida Statutes, is
25 repealed.

26 Section 199. Section 483.291, Florida Statutes, is
27 amended to read:

28 483.291 Powers and duties of the agency; rules.--The
29 agency shall adopt rules to implement this part and part II of
30 chapter 408, which rules must include the following:
31

1 (1) LICENSING STANDARDS.--The agency ~~shall license all~~
2 ~~multiphasic health testing centers meeting the requirements of~~
3 ~~this part and~~ shall prescribe standards necessary for
4 licensure.

5 (2) FEES.--In accordance with s. 408.805, an applicant
6 or licensee shall pay a fee for each license application
7 submitted under this part and part II of chapter 408. The
8 ~~agency shall establish annual fees, which shall be reasonable~~
9 ~~in amount, for licensing of centers. The fees must be~~
10 ~~sufficient in amount to cover the cost of licensing and~~
11 ~~inspecting centers.~~

12 (a) The ~~annual~~ licensure fee ~~is due at the time of~~
13 ~~application and is payable to the agency to be deposited in~~
14 ~~the Health Care Trust Fund administered by the agency. The~~
15 ~~license fee must be not less than~~~~\$600~~~~\$300~~ or more than
16 \$2,000 per biennium~~\$1,000~~.

17 (b) ~~The fee for late filing of an application for~~
18 ~~license renewal is \$200 and is in addition to the licensure~~
19 ~~fee due for renewing the license.~~

20 (3) ~~ANNUAL LICENSING.~~ The agency shall provide for
21 ~~annual licensing of centers. Any center that fails to pay the~~
22 ~~proper fee or otherwise fails to qualify by the date of~~
23 ~~expiration of its license is delinquent, and its license is~~
24 ~~automatically canceled without notice or further proceeding.~~
25 ~~Upon cancellation of its license under this subsection, a~~
26 ~~center may have its license reinstated only upon application~~
27 ~~and qualification as provided for initial applicants and upon~~
28 ~~payment of all delinquent fees.~~

29 (3)(4) STANDARDS OF PERFORMANCE.--The agency shall
30 prescribe standards for the performance of health testing
31 procedures.

1 (4)~~(5)~~ CONSTRUCTION OF CENTERS.--The agency may adopt
2 rules to ensure that centers comply with all local, county,
3 state, and federal standards for the construction, renovation,
4 maintenance, or repair of centers, which standards must ensure
5 the conduct and operation of the centers in a manner that will
6 protect the public health.

7 (5)~~(6)~~ SAFETY AND SANITARY CONDITIONS WITHIN THE
8 CENTER AND ITS SURROUNDINGS.--The agency shall establish
9 standards relating to safety and sanitary conditions within
10 the center and its surroundings, including water supply;
11 sewage; the handling of specimens; identification,
12 segregation, and separation of biohazardous waste as required
13 by s. 381.0098; storage of chemicals; workspace; firesafety;
14 and general measures, which standards must ensure the
15 protection of the public health. The agency shall determine
16 compliance by a multiphasic health testing center with the
17 requirements of s. 381.0098 by verifying that the center has
18 obtained all required permits.

19 (6)~~(7)~~ EQUIPMENT.--The agency shall establish minimum
20 standards for center equipment essential to the proper conduct
21 and operation of the center.

22 (7)~~(8)~~ PERSONNEL.--The agency shall prescribe minimum
23 qualifications for center personnel. A center may employ as a
24 medical assistant a person who has at least one of the
25 following qualifications:

26 (a) Prior experience of not less than 6 months as a
27 medical assistant in the office of a licensed medical doctor
28 or osteopathic physician or in a hospital, an ambulatory
29 surgical center, a home health agency, or a health maintenance
30 organization.

31

1 (b) Certification and registration by the American
2 Medical Technologists Association or other similar
3 professional association approved by the agency.

4 (c) Prior employment as a medical assistant in a
5 licensed center for at least 6 consecutive months at some time
6 during the preceding 2 years.

7 Section 200. Section 483.294, Florida Statutes, is
8 amended to read:

9 483.294 Inspection of centers.--The agency shall, at
10 least once annually, inspect the premises and operations of
11 all centers subject to licensure under this part, ~~without~~
12 ~~prior notice to the centers, for the purpose of studying and~~
13 ~~evaluating the operation, supervision, and procedures of such~~
14 ~~facilities, to determine their compliance with agency~~
15 ~~standards and to determine their effect upon the health and~~
16 ~~safety of the people of this state.~~

17 Section 201. Section 483.30, Florida Statutes, is
18 amended to read:

19 483.30 Licensing of centers.--The requirements of part
20 II of chapter 408 apply to the provision of services that
21 necessitate licensure pursuant to this part and part II of
22 chapter 408 and to entities licensed by or applying for such
23 licensure from the Agency for Health Care Administration
24 pursuant to this part; however, an applicant for licensure is
25 exempt from s. 408.810(5)-(10).

26 ~~(1) A person may not conduct, maintain, or operate a~~
27 ~~multiphasic health testing center in this state without~~
28 ~~obtaining a multiphasic health testing center license from the~~
29 ~~agency. The license is valid only for the person or persons~~
30 ~~to whom it is issued and may not be sold, assigned, or~~
31 ~~transferred, voluntarily or involuntarily. A license is not~~

1 valid for any premises other than the center for which it is
2 issued. However, a new license may be secured for the new
3 location for a fixed center before the actual change, if the
4 contemplated change is in compliance with this part and the
5 rules adopted under this part. ~~A center must be relicensed if~~
6 ~~a change of ownership occurs. Application for relicensure~~
7 ~~must be made 60 days before the change of ownership.~~

8 ~~(2) Each applicant for licensure must comply with the~~
9 ~~following requirements:~~

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

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

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

31

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

23 ~~(e) Each applicant must submit to the agency, with its~~
24 ~~application, a description and explanation of any exclusions,~~
25 ~~permanent suspensions, or terminations of the applicant from~~
26 ~~the Medicare or Medicaid programs. Proof of compliance with~~
27 ~~the requirements for disclosure of ownership and control~~
28 ~~interests under the Medicaid or Medicare programs may be~~
29 ~~accepted in lieu of this submission.~~

30 ~~(f) Each applicant must submit to the agency a~~
31 ~~description and explanation of any conviction of an offense~~

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

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

24 ~~(h) The agency may deny or revoke licensure if the~~
25 ~~applicant:~~

26 ~~1. Has falsely represented a material fact in the~~
27 ~~application required by paragraph (c) or paragraph (f), or has~~
28 ~~omitted any material fact from the application required by~~
29 ~~paragraph (c) or paragraph (f); or~~
30
31

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

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

6 Section 202. Section 483.302, Florida Statutes, is
7 amended to read:

8 483.302 Application for license.--

9 ~~(1) Application for a license as required by s. 483.30~~
10 ~~must be made to the agency on forms furnished by it and must~~
11 ~~be accompanied by the appropriate license fee.~~

12 ~~(2) The application for a license must ~~shall~~ contain:~~

13 ~~(1)(a) A determination as to whether the facility will~~
14 ~~be fixed or mobile and the location for a fixed facility.~~

15 ~~(b) The name and address of the owner if an~~
16 ~~individual; if the owner is a firm, partnership, or~~
17 ~~association, the name and address of every member thereof; if~~
18 ~~the owner is a corporation, its name and address and the name~~
19 ~~and address of its medical director and officers and of each~~
20 ~~person having at least a 10 percent interest in the~~
21 ~~corporation.~~

22 ~~(2)(c) The name of any person whose name is required~~
23 ~~on the application under the provisions of paragraph (b) and~~
24 ~~who owns at least a 10 percent interest in any professional~~
25 ~~service, firm, association, partnership, or corporation~~
26 ~~providing goods, leases, or services to the center for which~~
27 ~~the application is made, and the name and address of the~~
28 ~~professional service, firm, association, partnership, or~~
29 ~~corporation in which such interest is held.~~

30 ~~(d) The name by which the facility is to be known.~~

31

1 ~~(3)(e)~~ The name, address, and Florida physician's
2 license number of the medical director.

3 Section 203. Section 483.311 and subsection (1) of
4 section 483.317, Florida Statutes, are repealed.

5 Section 204. Section 483.32, Florida Statutes, is
6 amended to read:

7 483.32 Administrative fines ~~penalties~~.--

8 (1)~~(a)~~ The agency may ~~deny, suspend, revoke, annul,~~
9 ~~limit, or deny renewal of a license or~~ impose an
10 administrative fine, not to exceed \$500 per violation, for the
11 violation of any provision of this part, part II of chapter
12 408, or applicable rules adopted under this part. ~~Each day of~~
13 ~~violation constitutes a separate violation and is subject to a~~
14 ~~separate fine.~~

15 ~~(2)(b)~~ In determining the amount of the fine to be
16 levied for a violation, as provided in paragraph (a), the
17 following factors shall 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 ~~(e)~~ ~~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 when it determines that any condition in the licensed~~
4 ~~facility presents a clear and present danger to public health~~
5 ~~and safety.~~

6 Section 205. Subsection (1) of section 483.322 and
7 section 483.328, Florida Statutes, are repealed.

8 Section 206. In the case of a conflict between the
9 provisions of part II of chapter 408, Florida Statutes, and
10 the authorizing statutes governing the licensure of health
11 care providers by the Agency for Health Care Administration,
12 found in chapter 112, chapter 383, chapter 390, chapter 394,
13 chapter 395, chapter 400, chapter 440, or chapter 483, Florida
14 Statutes, the provisions of part II of chapter 408, Florida
15 Statutes, shall prevail.

16 Section 207. Between October 1, 2004, and September
17 30, 2005, the Agency for Health Care Administration may issue
18 any license for less than a 2-year period by charging a
19 prorated licensure fee and specifying a different renewal date
20 than the date that would otherwise be required for biennial
21 licensure.

22 Section 208. Subsection (7) of section 651.118,
23 Florida Statutes, is amended to read:

24 651.118 Agency for Health Care Administration;
25 certificates of need; sheltered beds; community beds.--

26 (7) Notwithstanding the provisions of subsection (2),
27 at the discretion of the continuing care provider, sheltered
28 nursing home beds may be used for persons who are not
29 residents of the continuing care facility and who are not
30 parties to a continuing care contract for a period of up to 5
31 years after the date of issuance of the initial nursing home

1 license. A provider whose 5-year period has expired or is
2 expiring may request the Agency for Health Care Administration
3 for an extension, not to exceed 30 percent of the total
4 sheltered nursing home beds, if the utilization by residents
5 of the nursing home facility in the sheltered beds will not
6 generate sufficient income to cover nursing home facility
7 expenses, as evidenced by one of the following:

8 (a) The nursing home facility has a net loss for the
9 most recent fiscal year as determined under generally accepted
10 accounting principles, excluding the effects of extraordinary
11 or unusual items, as demonstrated in the most recently audited
12 financial statement; or

13 (b) The nursing home facility would have had a pro
14 forma loss for the most recent fiscal year, excluding the
15 effects of extraordinary or unusual items, if revenues were
16 reduced by the amount of revenues from persons in sheltered
17 beds who were not residents, as reported on by a certified
18 public accountant.

19
20 The agency shall be authorized to grant an extension to the
21 provider based on the evidence required in this subsection.
22 The agency may request a continuing care facility to use up to
23 25 percent of the patient days generated by new admissions of
24 nonresidents during the extension period to serve Medicaid
25 recipients for those beds authorized for extended use if there
26 is a demonstrated need in the respective service area and if
27 funds are available. A provider who obtains an extension is
28 prohibited from applying for additional sheltered beds under
29 the provision of subsection (2), unless additional residential
30 units are built or the provider can demonstrate need by
31 continuing care facility residents to the Agency for Health

1 Care Administration. The 5-year limit does not apply to up to
2 five sheltered beds designated for inpatient hospice care as
3 part of a contractual arrangement with a hospice licensed
4 under part VI of chapter 400. A continuing care facility that
5 uses such beds after the 5-year period shall report such use
6 to the Agency for Health Care Administration. For purposes of
7 this subsection, "resident" means a person who, upon admission
8 to the continuing care facility, initially resides in a part
9 of the continuing care facility not licensed under part II of
10 chapter 400.

11 Section 209. Subsection (7) of section 456.025,
12 Florida Statutes, is amended to read:

13 456.025 Fees; receipts; disposition.--

14 (7) Each board, or the department if there is no
15 board, shall establish, by rule, a fee not to exceed \$250 for
16 anyone seeking approval to provide continuing education
17 courses or programs and shall establish by rule a biennial
18 renewal fee not to exceed \$250 for the renewal of providership
19 of such courses. The fees collected from continuing education
20 providers shall be used for the purposes of reviewing course
21 provider applications, monitoring the integrity of the courses
22 provided, and covering legal expenses incurred as a result of
23 not granting or renewing a providership, ~~and developing and~~
24 ~~maintaining an electronic continuing education tracking~~
25 ~~system. The department shall implement an electronic~~
26 ~~continuing education tracking system for each new biennial~~
27 ~~renewal cycle for which electronic renewals are implemented~~
28 ~~after the effective date of this act and shall integrate such~~
29 ~~system into the licensure and renewal system. All approved~~
30 ~~continuing education providers shall provide information on~~
31 ~~course attendance to the department necessary to implement the~~

1 ~~electronic tracking system. The department shall, by rule,~~
2 ~~specify the form and procedures by which the information is to~~
3 ~~be submitted.~~

4 Section 210. Section 456.0251, Florida Statutes, is
5 created to read:

6 456.0251 Continuing education.--

7 (1) Unless otherwise provided in a profession's
8 practice act, each board, or the department if there is no
9 board, shall establish by rule procedures for approval of
10 continuing education providers and continuing education
11 courses for renewal of licenses. Except for those continuing
12 education courses whose subjects are prescribed by law, each
13 board, or the department if there is no board, may limit by
14 rule the subject matter for approved continuing education
15 courses to courses addressing the scope of practice of each
16 respective health care profession.

17 (2) Licensees who have not completed all of the
18 continuing education credits required for licensure during a
19 biennium may obtain an extension of 3 months from the date
20 after the end of the license renewal biennium within which to
21 complete the requisite hours for license renewal. Each board,
22 or the department if there is no board, shall establish by
23 rule procedures for requesting a 3-month extension and whether
24 proof of completion of some approved hours of continuing
25 education are required to be submitted with the request for
26 extension as a prerequisite for granting the request.

27 (3) Failure to complete the requisite number of hours
28 of continuing education hours within a license renewal
29 biennium or within a 3 month period from the date after the
30 end of the license renewal biennium, if requested, shall be
31 grounds for issuance of a citation and a fine, plus a

1 requirement that at least the deficit hours are completed
2 within a time established by rule of each board, or the
3 department if there is no board. Each board, or the department
4 if there is no board, shall establish by rule a fine for each
5 continuing education hour which was not completed within the
6 license renewal biennium or the 3-month period following the
7 last day of the biennium if so requested, not to exceed \$500
8 per each hour not completed. The issuance of the citation and
9 fine shall not be considered discipline. A citation and a fine
10 issued under this subsection may only be issued to a licensee
11 a maximum of two times for two separate failures to complete
12 the requisite number of hours for license renewal.

13 (4) The department shall report to each board no later
14 than 3 months following the last day of the license renewal
15 biennium the percentage of licensees regulated by that board
16 who have not timely complied with the continuing education
17 requirements during the previous license renewal biennium for
18 which auditing of licensees regulated by that board are
19 completed. Each board shall direct the department the
20 percentage of licensees regulated by that board that are to be
21 audited during the next license renewal biennium. In addition
22 to the percentage of licensees audited as directed by the
23 boards, the department shall audit those licensees found to be
24 deficient during any of the two license renewal bienniums.

25 Section 211. Paragraph (ff) is added to subsection (1)
26 of section 456.072, Florida Statutes, to read:

27 456.072 Grounds for discipline; penalties;
28 enforcement.--

29 (1) The following acts shall constitute grounds for
30 which the disciplinary actions specified in subsection (2) may
31 be taken:

1 (ff) Failure for a third or more times to complete the
2 requisite number of hours of continuing education hours within
3 a license renewal biennium period or within a 3-month period
4 from the date after the end of the license renewal biennium,
5 if the extension was requested.

6 Section 212. Sections 212 through 228 of this act may
7 be cited as the "Clara Ramsey Care of the Elderly Act."

8 Section 213. Certified Geriatric Specialist
9 Preparation Pilot Program.--

10 (1) The Agency for Workforce Innovation shall
11 establish a pilot program for delivery of geriatric nursing
12 education to certified nursing assistants who wish to become
13 certified geriatric specialists. The agency shall select two
14 pilot sites in nursing homes that have received the Gold Seal
15 designation under section 400.235, Florida Statutes; have been
16 designated as a teaching nursing home under section 430.80,
17 Florida Statutes; or have not received a class I or class II
18 deficiency within the 30 months preceding application for this
19 program.

20 (2) To be eligible to receive geriatric nursing
21 education, a certified nursing assistant must have been
22 employed by a participating nursing home for at least 1 year
23 and must have received a high school diploma or its
24 equivalent.

25 (3) The education shall be provided at the worksite
26 and in coordination with the certified nursing assistant's
27 work schedule.

28 (4) Faculty shall provide the instruction under an
29 approved nursing program pursuant to section 464.019, Florida
30 Statutes.

31

1 (5) The education must be designed to prepare the
2 certified nursing assistant to meet the requirements for
3 certification as a geriatric specialist. The didactic and
4 clinical education must include all portions of the practical
5 nursing curriculum pursuant to section 464.019, Florida
6 Statutes, except for pediatric and obstetric/maternal-child
7 education, and must include additional education in the care
8 of ill, injured, or infirm geriatric patients and the
9 maintenance of health, the prevention of injury, and the
10 provision of palliative care for geriatric patients.

11 Section 214. Certified Geriatric Specialty Nursing
12 Initiative Steering Committee.--

13 (1) In order to guide the implementation of the
14 Certified Geriatric Specialist Preparation Pilot Program,
15 there is created a Certified Geriatric Specialty Nursing
16 Initiative Steering Committee. The steering committee shall be
17 composed of the following members:

18 (a) The chair of the Board of Nursing or his or her
19 designee;

20 (b) A representative of the Agency for Workforce
21 Innovation, appointed by the Director of Workforce Innovation;

22 (c) A representative of Workforce Florida, Inc.,
23 appointed by the chair of the Board of Directors of Workforce
24 Florida, Inc.;

25 (d) A representative of the Department of Education,
26 appointed by the Commissioner of Education;

27 (e) A representative of the Department of Health,
28 appointed by the Secretary of Health;

29 (f) A representative of the Agency for Health Care
30 Administration, appointed by the Secretary of Health Care
31 Administration;

1 (g) The Director of the Florida Center for Nursing;
2 (h) A representative of the Department of Elderly
3 Affairs, appointed by the Secretary of Elderly Affairs; and
4 (i) A representative of a Gold Seal nursing home that
5 is not one of the pilot program sites, appointed by the
6 Secretary of Health Care Administration.
7 (2) The steering committee shall:
8 (a) Provide consultation and guidance to the Agency
9 for Workforce Innovation on matters of policy during the
10 implementation of the pilot program; and
11 (b) Provide oversight to the evaluation of the pilot
12 program.
13 (3) Members of the steering committee are entitled to
14 reimbursement for per diem and travel expenses under section
15 112.061, Florida Statutes.
16 (4) The steering committee shall complete its
17 activities by June 30, 2007, and the authorization for the
18 steering committee ends on that date.
19 Section 215. Evaluation of the Certified Geriatric
20 Specialist Preparation Pilot Program.--The Agency for
21 Workforce Innovation, in consultation with the Certified
22 Geriatric Specialty Nursing Initiative Steering Committee,
23 shall conduct or contract for an evaluation of the pilot
24 program. The agency shall ensure that an evaluation report is
25 submitted to the Governor, the President of the Senate, and
26 the Speaker of the House of Representatives by January 1,
27 2007. The evaluation must address the experience and success
28 of the certified nursing assistants in the pilot program and
29 must contain recommendations regarding the expansion of the
30 delivery of geriatric nursing education in nursing homes.
31

1 Section 216. Reports.--The Agency for Workforce
2 Innovation shall submit status reports and recommendations
3 regarding legislation necessary to further the implementation
4 of the pilot program to the Governor, the President of the
5 Senate, and the Speaker of the House of Representatives on
6 January 1, 2005, January 1, 2006, and January 1, 2007.

7 Section 217. Section 464.0125, Florida Statutes, is
8 created to read:

9 464.0125 Certified geriatric specialists;
10 certification requirements.--

11 (1) DEFINITIONS; RESPONSIBILITIES.--

12 (a) As used in this section, the term:

13 1. "Certified geriatric specialist" means a person who
14 meets the qualifications specified in this section and who is
15 certified by the board to practice as a certified geriatric
16 specialist.

17 2. "Geriatric patient" means any patient who is 60
18 years of age or older.

19 3. "Practice of certified geriatric specialty nursing"
20 means the performance of selected acts in facilities licensed
21 under part II or part III of chapter 400, including the
22 administration of treatments and medications, in the care of
23 ill, injured, or infirm geriatric patients and the promotion
24 of wellness, maintenance of health, and prevention of illness
25 of geriatric patients under the direction of a registered
26 nurse, a licensed physician, a licensed osteopathic physician,
27 a licensed podiatric physician, or a licensed dentist. The
28 scope of practice of a certified geriatric specialist includes
29 the practice of practical nursing as defined in s. 464.003 for
30 geriatric patients only, except for any act in which
31 instruction and clinical knowledge of pediatric nursing or

1 obstetric/maternal-child nursing is required. A certified
2 geriatric specialist, while providing nursing services in
3 facilities licensed under part II or part III of chapter 400,
4 may supervise the activities of certified nursing assistants
5 and other unlicensed personnel providing services in such
6 facilities in accordance with rules adopted by the board.

7 (b) The certified geriatric specialist shall be
8 responsible and accountable for making decisions that are
9 based upon the individual's educational preparation and
10 experience in performing certified geriatric specialty
11 nursing.

12 (2) CERTIFICATION.--

13 (a) Any certified nursing assistant desiring to be
14 certified as a certified geriatric specialist must apply to
15 the department and submit proof that he or she holds a current
16 certificate as a certified nursing assistant under part II of
17 this chapter and has satisfactorily completed the following
18 requirements:

19 1. Is in good mental and physical health, is a
20 recipient of a high school diploma or its equivalent; has
21 completed the requirements for graduation from an approved
22 program for nursing or its equivalent, as determined by the
23 board, for the preparation of licensed practical nurses,
24 except for instruction and clinical knowledge of pediatric
25 nursing or obstetric/maternal-child nursing; and has completed
26 additional education in the care of ill, injured, or infirm
27 geriatric patients, the maintenance of health, the prevention
28 of injury, and the provision of palliative care for geriatric
29 patients. By September 1, 2004, the Board of Nursing shall
30 adopt rules establishing the core competencies for the
31 additional education in geriatric care. Any program that is

1 approved on July 1, 2004, by the board for the preparation of
2 registered nurses or licensed practical nurses may provide
3 education for the preparation of certified geriatric
4 specialists without further board approval.

5 2. Has the ability to communicate in the English
6 language, which may be determined by an examination given by
7 the department.

8 3. Has provided sufficient information, which must be
9 submitted by the department for a statewide criminal records
10 correspondence check through the Department of Law
11 Enforcement.

12 (b) Each applicant who meets the requirements of this
13 subsection is, unless denied pursuant to s. 464.018, entitled
14 to certification as a certified geriatric specialist. The
15 board must certify, and the department must issue a
16 certificate to practice as a certified geriatric specialist
17 to, any certified nursing assistant who meets the
18 qualifications set forth in this section. The board shall
19 establish an application fee not to exceed \$100 and a biennial
20 renewal fee not to exceed \$50. The board may adopt rules to
21 administer this section.

22 (c) A person receiving certification under this
23 section shall:

24 1. Work only within the confines of a facility
25 licensed under part II or part III of chapter 400.

26 2. Care for geriatric patients only.

27 3. Comply with the minimum standards of practice for
28 nurses and be subject to disciplinary action for violations of
29 s. 464.018.

30 (3) ARTICULATION.--Any certified geriatric specialist
31 who completes the additional instruction and coursework in an

1 approved nursing program pursuant to s. 464.019 for the
2 preparation of practical nursing in the areas of pediatric
3 nursing and obstetric/maternal-child nursing is, unless denied
4 pursuant to s. 464.018, entitled to licensure as a licensed
5 practical nurse if the applicant otherwise meets the
6 requirements of s. 464.008.

7 (4) TITLES AND ABBREVIATIONS; RESTRICTIONS;
8 PENALTIES.--

9 (a) Only persons who hold certificates to practice as
10 certified geriatric specialists in this state or who are
11 performing services within the practice of certified geriatric
12 specialty nursing pursuant to the exception set forth in s.
13 464.022(8) may use the title "Certified Geriatric Specialist"
14 and the abbreviation "C.G.S."

15 (b) A person may not practice or advertise as, or
16 assume the title of, certified geriatric specialist or use the
17 abbreviation "C.G.S." or take any other action that would lead
18 the public to believe that person is certified as such or is
19 performing services within the practice of certified geriatric
20 specialty nursing pursuant to the exception set forth in s.
21 464.022(8), unless that person is certified to practice as
22 such.

23 (c) A violation of this subsection is a misdemeanor of
24 the first degree, punishable as provided in s. 775.082 or s.
25 775.083.

26 (5) VIOLATIONS AND PENALTIES.--Practicing certified
27 geriatric specialty nursing, as defined in this section,
28 without holding an active certificate to do so constitutes a
29 felony of the third degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

31

1 Section 218. Paragraph (b) of subsection (1) of
2 section 381.00315, Florida Statutes, is amended to read:

3 381.00315 Public health advisories; public health
4 emergencies.--The State Health Officer is responsible for
5 declaring public health emergencies and issuing public health
6 advisories.

7 (1) As used in this section, the term:

8 (b) "Public health emergency" means any occurrence, or
9 threat thereof, whether natural or man made, which results or
10 may result in substantial injury or harm to the public health
11 from infectious disease, chemical agents, nuclear agents,
12 biological toxins, or situations involving mass casualties or
13 natural disasters. Prior to declaring a public health
14 emergency, the State Health Officer shall, to the extent
15 possible, consult with the Governor and shall notify the Chief
16 of Domestic Security Initiatives as created in s. 943.03. The
17 declaration of a public health emergency shall continue until
18 the State Health Officer finds that the threat or danger has
19 been dealt with to the extent that the emergency conditions no
20 longer exist and he or she terminates the declaration.
21 However, a declaration of a public health emergency may not
22 continue for longer than 60 days unless the Governor concurs
23 in the renewal of the declaration. The State Health Officer,
24 upon declaration of a public health emergency, may take
25 actions that are necessary to protect the public health. Such
26 actions include, but are not limited to:

27 1. Directing manufacturers of prescription drugs or
28 over-the-counter drugs who are permitted under chapter 499 and
29 wholesalers of prescription drugs located in this state who
30 are permitted under chapter 499 to give priority to the
31 shipping of specified drugs to pharmacies and health care

1 providers within geographic areas that have been identified by
2 the State Health Officer. The State Health Officer must
3 identify the drugs to be shipped. Manufacturers and
4 wholesalers located in the state must respond to the State
5 Health Officer's priority shipping directive before shipping
6 the specified drugs.

7 2. Notwithstanding chapters 465 and 499 and rules
8 adopted thereunder, directing pharmacists employed by the
9 department to compound bulk prescription drugs and provide
10 these bulk prescription drugs to physicians and nurses of
11 county health departments or any qualified person authorized
12 by the State Health Officer for administration to persons as
13 part of a prophylactic or treatment regimen.

14 3. Notwithstanding s. 456.036, temporarily
15 reactivating the inactive license of the following health care
16 practitioners, when such practitioners are needed to respond
17 to the public health emergency: physicians licensed under
18 chapter 458 or chapter 459; physician assistants licensed
19 under chapter 458 or chapter 459; certified geriatric
20 specialists certified under part I of chapter 464; licensed
21 practical nurses, registered nurses, and advanced registered
22 nurse practitioners licensed under part I of chapter 464;
23 respiratory therapists licensed under part V of chapter 468;
24 and emergency medical technicians and paramedics certified
25 under part III of chapter 401. Only those health care
26 practitioners specified in this paragraph who possess an
27 unencumbered inactive license and who request that such
28 license be reactivated are eligible for reactivation. An
29 inactive license that is reactivated under this paragraph
30 shall return to inactive status when the public health
31 emergency ends or prior to the end of the public health

1 emergency if the State Health Officer determines that the
2 health care practitioner is no longer needed to provide
3 services during the public health emergency. Such licenses may
4 only be reactivated for a period not to exceed 90 days without
5 meeting the requirements of s. 456.036 or chapter 401, as
6 applicable.

7 4. Ordering an individual to be examined, tested,
8 vaccinated, treated, or quarantined for communicable diseases
9 that have significant morbidity or mortality and present a
10 severe danger to public health. Individuals who are unable or
11 unwilling to be examined, tested, vaccinated, or treated for
12 reasons of health, religion, or conscience may be subjected to
13 quarantine.

14 a. Examination, testing, vaccination, or treatment may
15 be performed by any qualified person authorized by the State
16 Health Officer.

17 b. If the individual poses a danger to the public
18 health, the State Health Officer may subject the individual to
19 quarantine. If there is no practical method to quarantine the
20 individual, the State Health Officer may use any means
21 necessary to vaccinate or treat the individual.

22
23 Any order of the State Health Officer given to effectuate this
24 paragraph shall be immediately enforceable by a law
25 enforcement officer under s. 381.0012.

26 Section 219. Subsection (14) of section 400.021,
27 Florida Statutes, is amended to read:

28 400.021 Definitions.--When used in this part, unless
29 the context otherwise requires, the term:

30 (14) "Nursing service" means such services or acts as
31 may be rendered, directly or indirectly, to and in behalf of a

1 person by individuals as defined in ss. s- 464.003 and
2 464.0125.

3 Section 220. Subsection (1) of section 400.211,
4 Florida Statutes, is amended to read:

5 400.211 Persons employed as nursing assistants;
6 certification requirement.--

7 (1) To serve as a nursing assistant in any nursing
8 home, a person must be certified as a nursing assistant under
9 part II of chapter 464, unless the person is a registered
10 nurse, a ~~practical~~ nurse, or a certified geriatric
11 specialist certified or licensed in accordance with part I of
12 chapter 464 or an applicant for such licensure who is
13 permitted to practice nursing in accordance with rules adopted
14 by the Board of Nursing pursuant to part I of chapter 464.

15 Section 221. Paragraphs (a) and (c) of subsection (3)
16 of section 400.23, Florida Statutes, are amended to read:

17 400.23 Rules; evaluation and deficiencies; licensure
18 status.--

19 (3)(a) The agency shall adopt rules providing for the
20 minimum staffing requirements for nursing homes. These
21 requirements shall include, for each nursing home facility, a
22 minimum certified nursing assistant staffing of 2.3 hours of
23 direct care per resident per day beginning January 1, 2002,
24 increasing to 2.6 hours of direct care per resident per day
25 beginning January 1, 2003, and increasing to 2.9 hours of
26 direct care per resident per day beginning May 1, 2004.
27 Beginning January 1, 2002, no facility shall staff below one
28 certified nursing assistant per 20 residents, and a minimum
29 licensed nursing staffing of 1.0 hour of direct resident care
30 per resident per day but never below one licensed nurse per 40
31 residents. For purposes of computing nursing staffing minimums

1 and ratios, certified geriatric specialists shall be
2 considered licensed nursing staff. ~~Nursing assistants employed~~
3 ~~never below one licensed nurse per 40 residents.~~ Nursing
4 assistants employed under s. 400.211(2) may be included in
5 computing the staffing ratio for certified nursing assistants
6 only if they provide nursing assistance services to residents
7 on a full-time basis. Each nursing home must document
8 compliance with staffing standards as required under this
9 paragraph and post daily the names of staff on duty for the
10 benefit of facility residents and the public. The agency shall
11 recognize the use of licensed nurses for compliance with
12 minimum staffing requirements for certified nursing
13 assistants, provided that the facility otherwise meets the
14 minimum staffing requirements for licensed nurses and that the
15 licensed nurses so recognized are performing the duties of a
16 certified nursing assistant. Unless otherwise approved by the
17 agency, licensed nurses counted towards the minimum staffing
18 requirements for certified nursing assistants must exclusively
19 perform the duties of a certified nursing assistant for the
20 entire shift and shall not also be counted towards the minimum
21 staffing requirements for licensed nurses. If the agency
22 approved a facility's request to use a licensed nurse to
23 perform both licensed nursing and certified nursing assistant
24 duties, the facility must allocate the amount of staff time
25 specifically spent on certified nursing assistant duties for
26 the purpose of documenting compliance with minimum staffing
27 requirements for certified and licensed nursing staff. In no
28 event may the hours of a licensed nurse with dual job
29 responsibilities be counted twice.

30 (c) Licensed practical nurses licensed under chapter
31 464 who are providing nursing services in nursing home

1 facilities under this part may supervise the activities of
2 other licensed practical nurses, certified geriatric
3 specialists, certified nursing assistants, and other
4 unlicensed personnel providing services in such facilities in
5 accordance with rules adopted by the Board of Nursing.

6 Section 222. Paragraph (b) of subsection (2) of
7 section 409.908, Florida Statutes, is amended to read:

8 409.908 Reimbursement of Medicaid providers.--Subject
9 to specific appropriations, the agency shall reimburse
10 Medicaid providers, in accordance with state and federal law,
11 according to methodologies set forth in the rules of the
12 agency and in policy manuals and handbooks incorporated by
13 reference therein. These methodologies may include fee
14 schedules, reimbursement methods based on cost reporting,
15 negotiated fees, competitive bidding pursuant to s. 287.057,
16 and other mechanisms the agency considers efficient and
17 effective for purchasing services or goods on behalf of
18 recipients. If a provider is reimbursed based on cost
19 reporting and submits a cost report late and that cost report
20 would have been used to set a lower reimbursement rate for a
21 rate semester, then the provider's rate for that semester
22 shall be retroactively calculated using the new cost report,
23 and full payment at the recalculated rate shall be affected
24 retroactively. Medicare-granted extensions for filing cost
25 reports, if applicable, shall also apply to Medicaid cost
26 reports. Payment for Medicaid compensable services made on
27 behalf of Medicaid eligible persons is subject to the
28 availability of moneys and any limitations or directions
29 provided for in the General Appropriations Act or chapter 216.
30 Further, nothing in this section shall be construed to prevent
31 or limit the agency from adjusting fees, reimbursement rates,

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

6 (2)

7 (b) Subject to any limitations or directions provided
8 for in the General Appropriations Act, the agency shall
9 establish and implement a Florida Title XIX Long-Term Care
10 Reimbursement Plan (Medicaid) for nursing home care in order
11 to provide care and services in conformance with the
12 applicable state and federal laws, rules, regulations, and
13 quality and safety standards and to ensure that individuals
14 eligible for medical assistance have reasonable geographic
15 access to such care.

16 1. Changes of ownership or of licensed operator do not
17 qualify for increases in reimbursement rates associated with
18 the change of ownership or of licensed operator. The agency
19 shall amend the Title XIX Long Term Care Reimbursement Plan to
20 provide that the initial nursing home reimbursement rates, for
21 the operating, patient care, and MAR components, associated
22 with related and unrelated party changes of ownership or
23 licensed operator filed on or after September 1, 2001, are
24 equivalent to the previous owner's reimbursement rate.

25 2. The agency shall amend the long-term care
26 reimbursement plan and cost reporting system to create direct
27 care and indirect care subcomponents of the patient care
28 component of the per diem rate. These two subcomponents
29 together shall equal the patient care component of the per
30 diem rate. Separate cost-based ceilings shall be calculated
31 for each patient care subcomponent. The direct care

1 subcomponent of the per diem rate shall be limited by the
2 cost-based class ceiling, and the indirect care subcomponent
3 shall be limited by the lower of the cost-based class ceiling,
4 by the target rate class ceiling, or by the individual
5 provider target. The agency shall adjust the patient care
6 component effective January 1, 2002. The cost to adjust the
7 direct care subcomponent shall be net of the total funds
8 previously allocated for the case mix add-on. The agency shall
9 make the required changes to the nursing home cost reporting
10 forms to implement this requirement effective January 1, 2002.

11 3. The direct care subcomponent shall include salaries
12 and benefits of direct care staff providing nursing services
13 including registered nurses, licensed practical nurses,
14 certified geriatric specialists certified under part I of
15 chapter 464, and certified nursing assistants who deliver care
16 directly to residents in the nursing home facility. This
17 excludes nursing administration, MDS, and care plan
18 coordinators, staff development, and staffing coordinator.

19 4. All other patient care costs shall be included in
20 the indirect care cost subcomponent of the patient care per
21 diem rate. There shall be no costs directly or indirectly
22 allocated to the direct care subcomponent from a home office
23 or management company.

24 5. On July 1 of each year, the agency shall report to
25 the Legislature direct and indirect care costs, including
26 average direct and indirect care costs per resident per
27 facility and direct care and indirect care salaries and
28 benefits per category of staff member per facility.

29 6. In order to offset the cost of general and
30 professional liability insurance, the agency shall amend the
31 plan to allow for interim rate adjustments to reflect

1 increases in the cost of general or professional liability
2 insurance for nursing homes. This provision shall be
3 implemented to the extent existing appropriations are
4 available.

5
6 It is the intent of the Legislature that the reimbursement
7 plan achieve the goal of providing access to health care for
8 nursing home residents who require large amounts of care while
9 encouraging diversion services as an alternative to nursing
10 home care for residents who can be served within the
11 community. The agency shall base the establishment of any
12 maximum rate of payment, whether overall or component, on the
13 available moneys as provided for in the General Appropriations
14 Act. The agency may base the maximum rate of payment on the
15 results of scientifically valid analysis and conclusions
16 derived from objective statistical data pertinent to the
17 particular maximum rate of payment.

18 Section 223. Subsection (2) of section 458.303,
19 Florida Statutes, is amended to read:

20 458.303 Provisions not applicable to other
21 practitioners; exceptions, etc.--

22 (2) Nothing in s. 458.301, s. 458.303, s. 458.305, s.
23 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.319, s.
24 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s.
25 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347
26 shall be construed to prohibit any service rendered by a
27 registered nurse, ~~or~~ a licensed practical nurse, or a
28 certified geriatric specialist certified under part I of
29 chapter 464, if such service is rendered under the direct
30 supervision and control of a licensed physician who provides
31 specific direction for any service to be performed and gives

1 final approval to all services performed. Further, nothing in
2 this or any other chapter shall be construed to prohibit any
3 service rendered by a medical assistant in accordance with the
4 provisions of s. 458.3485.

5 Section 224. Subsection (1) and paragraph (a) of
6 subsection (2) of section 1009.65, Florida Statutes, are
7 amended to read:

8 1009.65 Medical Education Reimbursement and Loan
9 Repayment Program.--

10 (1) To encourage qualified medical professionals to
11 practice in underserved locations where there are shortages of
12 such personnel, there is established the Medical Education
13 Reimbursement and Loan Repayment Program. The function of the
14 program is to make payments that offset loans and educational
15 expenses incurred by students for studies leading to a medical
16 or nursing degree, medical or nursing licensure, or advanced
17 registered nurse practitioner certification or physician
18 assistant licensure. The following licensed or certified
19 health care professionals are eligible to participate in this
20 program: medical doctors with primary care specialties,
21 doctors of osteopathic medicine with primary care specialties,
22 physician's assistants, certified geriatric specialists
23 certified under part I of chapter 464, licensed practical
24 nurses and registered nurses, and advanced registered nurse
25 practitioners with primary care specialties such as certified
26 nurse midwives. Primary care medical specialties for
27 physicians include obstetrics, gynecology, general and family
28 practice, internal medicine, pediatrics, and other specialties
29 which may be identified by the Department of Health.

30

31

1 (2) From the funds available, the Department of Health
2 shall make payments to selected medical professionals as
3 follows:

4 (a) Up to \$4,000 per year for certified geriatric
5 specialists certified under part I of chapter 464, licensed
6 practical nurses, and registered nurses, up to \$10,000 per
7 year for advanced registered nurse practitioners and
8 physician's assistants, and up to \$20,000 per year for
9 physicians. Penalties for noncompliance shall be the same as
10 those in the National Health Services Corps Loan Repayment
11 Program. Educational expenses include costs for tuition,
12 matriculation, registration, books, laboratory and other fees,
13 other educational costs, and reasonable living expenses as
14 determined by the Department of Health.

15 Section 225. Subsection (2) of section 1009.66,
16 Florida Statutes, is amended to read:

17 1009.66 Nursing Student Loan Forgiveness Program.--

18 (2) To be eligible, a candidate must have graduated
19 from an accredited or approved nursing program and have
20 received a Florida license as a licensed practical nurse, a
21 certified geriatric specialist certified under part I of
22 chapter 464, or a registered nurse or a Florida certificate as
23 an advanced registered nurse practitioner.

24 Section 226. The sum of \$157,017 is appropriated from
25 the General Revenue Fund to the Agency for Workforce
26 Innovation to support the work of the Certified Geriatric
27 Specialty Nursing Initiative Steering Committee, to administer
28 the pilot sites, contract for an evaluation, and to the extent
29 that funds are available, and if necessary, to provide nursing
30 faculty, substitute certified nursing assistants for those who
31

1 are in clinical education, and technical support to the pilot
2 sites during the 2004-2005 fiscal year.

3 Section 227. Subsection (6) is added to section
4 464.201, Florida Statutes, to read:

5 464.201 Definitions.--As used in this part, the term:

6 (6) "Practice of a certified nursing assistant" means
7 providing care and assisting persons with tasks relating to
8 the activities of daily living. Such tasks are those
9 associated with personal care, maintaining mobility, nutrition
10 and hydration, toileting and elimination, assistive devices,
11 safety and cleanliness, data gathering, reporting abnormal
12 signs and symptoms, post mortem care, patient socialization
13 and reality orientation, end-of-life care, CPR and emergency
14 care, residents' or patients' rights, documentation of nursing
15 assistant services, and other tasks that a certified nurse
16 assistant may perform after training beyond that required for
17 initial certification and upon validation of competence in
18 that skill by a registered nurse. This section does not
19 restrict the ability of any person who is otherwise trained
20 and educated from performing such tasks.

21 Section 228. Section 464.202, Florida Statutes, is
22 amended to read:

23 464.202 Duties and powers of the board.--The board
24 shall maintain, or contract with or approve another entity to
25 maintain, a state registry of certified nursing assistants.
26 The registry must consist of the name of each certified
27 nursing assistant in this state; other identifying information
28 defined by board rule; certification status; the effective
29 date of certification; other information required by state or
30 federal law; information regarding any crime or any abuse,
31 neglect, or exploitation as provided under chapter 435; and

1 any disciplinary action taken against the certified nursing
2 assistant. The registry shall be accessible to the public, the
3 certificateholder, employers, and other state agencies. The
4 board shall adopt by rule testing procedures for use in
5 certifying nursing assistants and shall adopt rules regulating
6 the practice of certified nursing assistants which specify the
7 scope of practice authorized and level of supervision required
8 for the practice of certified nursing assistants to enforce
9 ~~this part~~. The board may contract with or approve another
10 entity or organization to provide the examination services,
11 including the development and administration of examinations.
12 The board shall require that the contract provider offer
13 certified nursing assistant applications via the Internet, and
14 may require the contract provider to accept certified nursing
15 assistant applications for processing via the Internet. The
16 board shall require the contract provider to provide the
17 preliminary results of the certified nursing examination on
18 the date the test is administered. The provider shall pay all
19 reasonable costs and expenses incurred by the board in
20 evaluating the provider's application and performance during
21 the delivery of services, including examination services and
22 procedures for maintaining the certified nursing assistant
23 registry.

24 Section 229. Nothing in this act shall be construed as
25 amending, modifying, limiting, or otherwise affecting in any
26 way the legislative intent, scope, terms, prohibition, or
27 requirements of section 456.052 or section 456.053, Florida
28 Statutes.

29 Section 230. Except as otherwise expressly provided in
30 this act, and except for this section, which shall take effect
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1 upon becoming a law, this act shall take effect October 1,
2 2004.
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