

1 A bill to be entitled

2 An act relating to developmental services and mental
3 health; creating ss. 393.135, 394.4593, and 916.1075,
4 F.S.; defining the terms "employee," "sexual activity,"
5 and "sexual misconduct"; providing that it is a second
6 degree felony for an employee to engage in sexual
7 misconduct with certain developmentally disabled clients,
8 certain mental health patients, or certain forensic
9 clients; providing certain exceptions; requiring certain
10 employees to report sexual misconduct to the central abuse
11 hotline of the Department of Children and Family Services
12 and to the appropriate local law enforcement agency;
13 providing for notification to the inspector general of the
14 Department of Children and Family Services; providing that
15 it is a first degree misdemeanor to knowingly and
16 willfully fail to make a report as required, or to prevent
17 another from doing so, or to submit inaccurate or
18 untruthful information; providing that it is a third
19 degree felony to coerce or threaten another person to
20 alter testimony or a report with respect to an incident of
21 sexual misconduct; providing criminal penalties; amending
22 s. 435.03, F.S.; expanding level 1 screening standards to
23 include criminal offenses related to sexual misconduct
24 with certain developmentally disabled clients, mental
25 health patients, or forensic clients and the reporting of
26 such sexual misconduct; amending s. 435.04, F.S.;
27 expanding level 2 screening standards to include the
28 offenses related to sexual misconduct with certain

29 | developmentally disabled clients, mental health patients,
30 | or forensic clients and the reporting of such sexual
31 | misconduct; reenacting s. 393.067(6)(a), (b), (c), (d),
32 | (f), and (g), F.S., relating to background screening and
33 | licensure of personnel of intermediate care facilities for
34 | the developmentally disabled, for the purpose of
35 | incorporating the amendment to s. 435.04, F.S., in
36 | references thereto; amending s. 394.4572, F.S.; requiring
37 | the employment screening of mental health personnel to
38 | include screening as provided under ch. 435, F.S.;
39 | amending s. 943.0585, F.S., relating to court-ordered
40 | expunction of criminal history records, for the purpose of
41 | incorporating the amendment to s. 943.059, F.S., in a
42 | reference thereto; providing that certain criminal history
43 | records relating to sexual misconduct with developmentally
44 | disabled clients, mental health patients, or forensic
45 | clients, or the reporting of such sexual misconduct, shall
46 | not be expunged; providing that the application for
47 | eligibility for expunction certify that the criminal
48 | history record does not relate to an offense involving
49 | sexual misconduct with certain developmentally disabled
50 | clients, mental health patients, or forensic clients, or
51 | the reporting of such sexual misconduct; amending s.
52 | 943.059, F.S., relating to court-ordered sealing of
53 | criminal history records, for the purpose of incorporating
54 | the amendment to s. 943.0585, F.S., in a reference
55 | thereto; providing that certain criminal history records
56 | relating to sexual misconduct with developmentally

57 disabled clients, mental health patients, or forensic
58 clients, or the reporting of such sexual misconduct, shall
59 not be sealed; providing that the application for
60 eligibility for sealing certify that the criminal history
61 record does not relate to an offense involving sexual
62 misconduct with certain developmentally disabled clients,
63 mental health patients, or forensic clients, or the
64 reporting of such sexual misconduct; amending s. 400.215,
65 F.S., and reenacting paragraphs (b) and (c) of subsection
66 (2) and subsection (3), relating to background screening
67 requirements for certain nursing home personnel, for the
68 purpose of incorporating the amendments to ss. 435.03 and
69 435.04, F.S., in references thereto; correcting a cross
70 reference; amending s. 400.964, F.S., and reenacting
71 subsections (1), (2), and (7), relating to background
72 screening requirements for certain personnel employed by
73 intermediate care facilities for the developmentally
74 disabled, for the purpose of incorporating the amendments
75 to ss. 435.03 and 435.04, F.S., in references thereto;
76 correcting a cross reference; amending s. 435.045, F.S.,
77 and reenacting paragraph (a) of subsection (1), relating
78 to requirements for the placement of dependent children,
79 for the purpose of incorporating the amendment to s.
80 435.04, F.S., in a reference thereto; correcting a cross
81 reference; reenacting ss. 400.414(1)(f) and (g), 400.4174,
82 400.509(4)(a), (b), (c), (d), (f), and (g), 400.556(2)(c),
83 400.6065(1), (2), and (4), 400.980(4)(a), (b), (c), (d),
84 (f), and (g), 409.175(2)(k), 409.907(8)(d), 435.05(1) and

85 (3), 744.3135, and 985.04(2), F.S., relating to denial,
86 revocation, or suspension of license to operate an
87 assisted living facility; background screening
88 requirements for certain personnel employed by assisted
89 living facilities; registration of particular home health
90 care service providers; denial, suspension, or revocation
91 of license to operate adult day care centers; background
92 screening requirements for certain hospice personnel;
93 background screening requirements for registrants of the
94 health care service pools; the definition of "screening"
95 in connection with the licensure of family foster homes,
96 residential child-caring agencies, and child-placing
97 agencies; background screening requirements of Medicaid
98 providers; employment of persons in positions requiring
99 background screening; credit and criminal investigations
100 of guardians; oaths, records, and confidential information
101 pertaining to juvenile offenders, respectively, for the
102 purpose of incorporating the amendments to ss. 435.03 and
103 435.04, F.S., in references thereto; reenacting ss.
104 400.512, 400.619(4), 400.6194(1), 400.953, 409.912(32),
105 435.07(4), 464.018(1)(e), 744.309(3), 744.474(12), and
106 985.407(4), F.S., relating to background screening of home
107 health agency personnel, nurse registry personnel,
108 companions, and homemakers; application and renewal of
109 adult family-care home provider licenses; relating to
110 denial, revocation, or suspension of adult family-care
111 home provider license; background screening of home
112 medical equipment provider personnel, background screening

113 requirements for certain persons responsible for managed
 114 care plans; exemptions from disqualification from
 115 employment; denial of nursing license and disciplinary
 116 actions against such licensees; disqualification of
 117 guardians; removal of guardians; background screening
 118 requirements for certain Department of Juvenile Justice
 119 personnel, respectively, for the purpose of incorporating
 120 the amendment to s. 435.03, F.S., in references thereto;
 121 reenacting ss. 39.001(2)(b), 39.821(1), 110.1127(3)(a) and
 122 (c), 112.0455(12)(a), 381.0059(1), (2), and (4),
 123 381.60225(1)(a), (b), (c), (d), (f), and (g),
 124 383.305(7)(a), (b), (c), (d), (f), and (g), 390.015(3)(a),
 125 (b), (c), (d), (f), and (g), 394.875(13)(a), (b), (c),
 126 (d), (f), and (g), 395.0055(1), (2), (3), (4), (6), and
 127 (8), 395.0199(4)(a), (b), (c), (d), (f), and (g),
 128 397.451(1)(a), 400.071(4)(a), (b), (c), (d), and (f),
 129 400.471(4)(a), (b), (c), (d), (f), and (g), 400.506(2)(a),
 130 (b), (c), (d), (f), and (g), 400.5572, 400.607(3)(a),
 131 400.801(4)(a), (b), (c), (d), (f), and (g), 400.805(3)(a),
 132 (b), (c), (d), (f), and (g), 400.906(5)(a), (b), (c), (d),
 133 (f), and (g), 400.931(5)(a), (b), (c), (e), and (f),
 134 400.962(10)(a), (b), (c), (d), and (f), 400.991(7)(b) and
 135 (d), 402.302(2)(e), 402.305(2)(a), 402.3054(3),
 136 483.30(2)(a), (b), (c), (d), (f), and (g), 483.101(2)(a),
 137 (b), (c), (d), (f), and (g), 744.1085(5), 984.01(2)(b),
 138 985.01(2)(b), 1002.36(7)(a) and (b), F.S., relating to
 139 background screening requirements for certain Department
 140 of Children and Family Services personnel; qualifications

141 of guardians ad litem; security checks of certain public
 142 officers and employees; background screening requirements
 143 of certain laboratory personnel in connection with the
 144 Drug-Free Workplace Act; background screening requirements
 145 for school health services personnel; background screening
 146 of certain personnel of the public health system;
 147 background screening and licensure of birth center
 148 personnel; background screening and licensure of abortion
 149 clinic personnel; background screening of mental health
 150 personnel; background screening and licensure of personnel
 151 of crisis stabilization units, residential treatment
 152 facilities, and residential treatment centers for children
 153 and adolescents; background screening and licensure of
 154 personnel of hospitals, ambulatory surgical centers, and
 155 mobile surgical facilities; background screening of
 156 certain personnel in connection with registration for
 157 private utilization reviews; background screening of
 158 certain service provider personnel; background screening
 159 and licensure of certain long-term care facility
 160 personnel; background screening and licensure of certain
 161 home health agency personnel; background screening and
 162 licensure of nurse registry applicants; background
 163 screening of certain adult day care center personnel;
 164 denial or revocation of hospice license; background
 165 screening and licensure of certain transitional living
 166 facility personnel; background screening and licensure of
 167 certain prescribed pediatric extended care center
 168 personnel; background screening and licensure of certain

169 | home medical equipment provider personnel; background
 170 | screening and licensure of certain personnel of
 171 | intermediate care facilities for the developmentally
 172 | disabled; background screening and licensure of health
 173 | care clinic personnel; the definition of "child care
 174 | facility" in connection with background screening of
 175 | operators; background screening requirements for personnel
 176 | of child care facilities; background screening
 177 | requirements for child enrichment service providers;
 178 | background screening and licensure of certain personnel of
 179 | multiphasic health testing centers; background screening
 180 | and licensure of certain clinical laboratory personnel;
 181 | regulation of professional guardians; background screening
 182 | of certain Department of Juvenile Justice and Department
 183 | of Children and Family Services personnel in connection
 184 | with programs for children and families in need of
 185 | services; background screening of certain Department of
 186 | Juvenile Justice and Department of Children and Family
 187 | Services personnel in connection with juvenile justice
 188 | programs, background screening of personnel of the Florida
 189 | School for the Deaf and the Blind, respectively, for the
 190 | purposes of incorporating the amendment to s. 435.04,
 191 | F.S., in references thereto; reenacting s. 943.0582(2)(a)
 192 | and (6), F.S., relating to prearrest, postarrest, or teen
 193 | court diversion program expunction for the purpose of
 194 | incorporating the amendments to ss. 943.0585 and 943.059,
 195 | F.S., in references thereto; reenacting s. 943.053(7),
 196 | (8), and (9), F.S., relating to dissemination of criminal

197 justice information, for the purpose of incorporating the
198 amendment to s. 943.059, F.S., in references thereto;
199 providing applicability; amending s. 20.19, F.S.; removing
200 the developmental disabilities program from the Department
201 of Children and Family Services; creating s. 20.197, F.S.;
202 establishing the Agency for Persons with Disabilities for
203 the purpose of providing services to persons with
204 developmental disabilities, including institutional
205 services; directing the agency to execute interagency
206 agreements with the Agency for Health Care Administration
207 for the financial management of the Medicaid waivers and
208 the Department of Children and Family Services for
209 administrative support; amending s. 393.063, F.S.;
210 updating definitions and deleting obsolete definitions;
211 amending s. 393.064, F.S.; deleting requirements that the
212 agency's legislative budget request include funding for
213 prevention; amending s. 393.0655, F.S.; requiring Level 2
214 screening for specified persons and service providers;
215 providing a limitation on the screening requirement in
216 certain circumstances involving children between 12 and 18
217 years of age; amending s. 393.066, F.S.; removing
218 requirement that services be administered and approved by
219 the districts; modifying a requirement to provide certain
220 services; deleting a requirement for a 5-year plan
221 relating to community-based services; adding a requirement
222 to assist clients in gaining employment; repealing
223 obsolete requirement authorizing the state to lease or
224 construct residential facilities; deleting authorization

225 | to adopt rules ensuring compliance with federal rules;
 226 | amending s. 393.0661, F.S.; authorizing the Agency for
 227 | Disabled Persons to enter into certain contracts;
 228 | providing for reimbursement to certain providers of
 229 | services to the developmentally disabled pursuant a
 230 | methodology; requiring the Agency for Health Care
 231 | administration, in consultation with the Agency for
 232 | Disabled Persons, to adopt rules related to such
 233 | methodology; authorizing the Agency for Health Care
 234 | Administration to adopt emergency rules in certain
 235 | circumstances; limiting the applicability of such
 236 | emergency rules; authorizing the Agency for Health Care
 237 | Administration, in consultation with the Agency for
 238 | Disabled Persons, to make certain adjustments necessary to
 239 | comply with the availability of appropriations; deleting
 240 | an obsolete provision; modifying provisions relating to an
 241 | assessment instrument; adding requirements for adoption of
 242 | rate methodologies; amending s. 393.068, F.S.; making
 243 | service provision subject to available resources; updating
 244 | list of services to be provided; deleting provision
 245 | referring to 5-year plans; amending s. 393.0695, F.S.;
 246 | requiring in-home subsidy amounts to be reassessed
 247 | annually; amending s. 393.11, F.S.; deleting provisions
 248 | referring to districts, department programs, and the
 249 | nonexistent Department of Labor and Employment Security;
 250 | amending s. 393.13, F.S.; deleting obsolete provisions;
 251 | adding legislative intent relating to reducing the use of
 252 | sheltered workshops; amending s. 393.17, F.S.; authorizing

253 the agency to contract for the certification of behavioral
254 analysts; deleting provisions relating to a certification
255 program and provisions allowing fees; amending s. 393.22,
256 F.S.; deleting prohibition preventing transfer of funds
257 and ensuring financial commitment for specified
258 developmental conditions; amending s. 393.502, F.S.;
259 removing reference to districts; deleting a provision
260 permitting appointment of family care council members if
261 the Governor does not act; amending ss. 408.301 and
262 408.302, F.S.; amending legislative intent to add the
263 Agency for Persons with Disabilities and the Department of
264 Elderly Affairs as agencies that the Agency for Health
265 Care Administration must enter into interagency agreement
266 with regarding persons with special needs; amending s.
267 409.906, F.S.; clarifying powers of the Agency for Health
268 Care Administration with respect to limiting coverage for
269 certain services; repealing s. 393.14, F.S.; requiring a
270 multiyear plan; repealing s. 393.165, F.S., relating to
271 ICF/DDs; repealing s. 393.166, F.S., relating to homes for
272 special services; repealing s. 393.505, F.S., relating to
273 comprehensive day treatment service projects; transferring
274 programs and institutions relating to developmental
275 disabilities from the Department of Children and Family
276 Services to the Agency for Persons with Disabilities;
277 providing duties of those agencies as well as the
278 Department of Management Services; providing for
279 substitution of parties in administrative and judicial
280 proceedings; providing duties of the Office of Program

281 Policy Analysis and Government Accountability; providing
 282 for a report; amending ss. 92.53, 397.405, 400.464,
 283 419.001, 914.16, 914.17, 918.16, 943.0585, and 943.059,
 284 F.S.; conforming cross references; amending ss. 393.0641,
 285 393.065, 393.0651, 393.067, 393.0673, 393.0675, 393.0678,
 286 393.071, 393.075, 393.115, 393.12, 393.125, 393.15,
 287 393.501, 393.503, and 393.506, F.S.; conforming to the
 288 changes made by the act; providing applicability;
 289 providing for contracts for eligibility determination
 290 functions; providing for review of eligibility contracts
 291 by the Legislative Budget Commission in certain instances;
 292 providing effective dates.

293

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

295

296 Section 1. Section 393.135, Florida Statutes, is created
 297 to read:

298 393.135 Sexual misconduct prohibited; reporting required;
 299 penalties.--

300 (1) As used in this section, the term:

301 (a) "Employee" includes any paid staff member, volunteer,
 302 or intern of the agency or the department; any person under
 303 contract with the agency or the department; and any person
 304 providing care or support to a client on behalf of the
 305 department or its providers.

306 (b) "Sexual activity" means:

307 1. Fondling the genital area, groin, inner thighs,
 308 buttocks, or breasts of a person.

309 2. The oral, anal, or vaginal penetration by or union with
 310 the sexual organ of another or the anal or vaginal penetration
 311 of another by any other object.

312 3. Intentionally touching in a lewd or lascivious manner
 313 the breasts, genitals, the genital area, or buttocks, or the
 314 clothing covering them, of a person, or forcing or enticing a
 315 person to touch the perpetrator.

316 4. Intentionally masturbating in the presence of another
 317 person.

318 5. Intentionally exposing the genitals in a lewd or
 319 lascivious manner in the presence of another person.

320 6. Intentionally committing any other sexual act that does
 321 not involve actual physical or sexual contact with the victim,
 322 including, but not limited to, sadomasochistic abuse, sexual
 323 bestiality, or the simulation of any act involving sexual
 324 activity in the presence of a victim.

325 (c) "Sexual misconduct" means any sexual activity between
 326 an employee and a client, regardless of the consent of the
 327 client. The term does not include an act done for a bona fide
 328 medical purpose or an internal search conducted in the lawful
 329 performance of duty by an employee.

330 (2) An employee who engages in sexual misconduct with an
 331 individual with a developmental disability who:

332 (a) Is in the custody of the department;

333 (b) Resides in a residential facility, including any
 334 comprehensive transitional education program, developmental
 335 services institution, foster care facility, group home facility,

336 intermediate care facility for the developmentally disabled, or
337 residential habilitation center; or

338 (c) Receives services from a family care program
339

340 commits a felony of the second degree, punishable as provided in
341 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
342 guilty of violating this subsection without having committed the
343 crime of sexual battery.

344 (3) The consent of the client to sexual activity is not a
345 defense to prosecution under this section.

346 (4) This section does not apply to an employee who:

347 (a) Is legally married to the client; or

348 (b) Has no reason to believe that the person with whom the
349 employee engaged in sexual misconduct is a client receiving
350 services as described in subsection (2).

351 (5) An employee who witnesses sexual misconduct, or who
352 otherwise knows or has reasonable cause to suspect that a person
353 has engaged in sexual misconduct, shall immediately report the
354 incident to the department's central abuse hotline and to the
355 appropriate local law enforcement agency. Such employee shall
356 also prepare, date, and sign an independent report that
357 specifically describes the nature of the sexual misconduct, the
358 location and time of the incident, and the persons involved. The
359 employee shall deliver the report to the supervisor or program
360 director, who is responsible for providing copies to the
361 department's inspector general. The inspector general shall
362 immediately conduct an appropriate administrative investigation,
363 and, if there is probable cause to believe that sexual

364 misconduct has occurred, the inspector general shall notify the
 365 state attorney in the circuit in which the incident occurred.

366 (6)(a) Any person who is required to make a report under
 367 this section and who knowingly or willfully fails to do so, or
 368 who knowingly or willfully prevents another person from doing
 369 so, commits a misdemeanor of the first degree, punishable as
 370 provided in s. 775.082 or s. 775.083.

371 (b) Any person who knowingly or willfully submits
 372 inaccurate, incomplete, or untruthful information with respect
 373 to a report required under this section commits a misdemeanor of
 374 the first degree, punishable as provided in s. 775.082 or s.
 375 775.083.

376 (c) Any person who knowingly or willfully coerces or
 377 threatens any other person with the intent to alter testimony or
 378 a written report regarding an incident of sexual misconduct
 379 commits a felony of the third degree, punishable as provided in
 380 s. 775.082, s. 775.083, or s. 775.084.

381 (7) The provisions and penalties set forth in this section
 382 are in addition to any other civil, administrative, or criminal
 383 action provided by law which may be applied against an employee.

384 Section 2. Section 394.4593, Florida Statutes, is created
 385 to read:

386 394.4593 Sexual misconduct prohibited; reporting required;
 387 penalties.--

388 (1) As used in this section, the term:

389 (a) "Employee" includes any paid staff member, volunteer,
 390 or intern of the department; any person under contract with the

391 department; and any person providing care or support to a client
392 on behalf of the department or its providers.

393 (b) "Sexual activity" means:

394 1. Fondling the genital area, groin, inner thighs,
395 buttocks, or breasts of a person.

396 2. The oral, anal, or vaginal penetration by or union with
397 the sexual organ of another or the anal or vaginal penetration
398 of another by any other object.

399 3. Intentionally touching in a lewd or lascivious manner
400 the breasts, genitals, the genital area, or buttocks, or the
401 clothing covering them, of a person, or forcing or enticing a
402 person to touch the perpetrator.

403 4. Intentionally masturbating in the presence of another
404 person.

405 5. Intentionally exposing the genitals in a lewd or
406 lascivious manner in the presence of another person.

407 6. Intentionally committing any other sexual act that does
408 not involve actual physical or sexual contact with the victim,
409 including, but not limited to, sadomasochistic abuse, sexual
410 bestiality, or the simulation of any act involving sexual
411 activity in the presence of a victim.

412 (c) "Sexual misconduct" means any sexual activity between
413 an employee and a patient, regardless of the consent of the
414 patient. The term does not include an act done for a bona fide
415 medical purpose or an internal search conducted in the lawful
416 performance of duty by an employee.

417 (2) An employee who engages in sexual misconduct with a
418 patient who:

419 (a) Is in the custody of the department; or
420 (b) Resides in a receiving facility or a treatment
421 facility, as those terms are defined in s. 394.455,
422
423 commits a felony of the second degree, punishable as provided in
424 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
425 guilty of violating this subsection without having committed the
426 crime of sexual battery.

427 (3) The consent of the patient to sexual activity is not a
428 defense to prosecution under this section.

429 (4) This section does not apply to an employee who:
430 (a) Is legally married to the patient; or
431 (b) Has no reason to believe that the person with whom the
432 employee engaged in sexual misconduct is a patient receiving
433 services as described in subsection (2).

434 (5) An employee who witnesses sexual misconduct, or who
435 otherwise knows or has reasonable cause to suspect that a person
436 has engaged in sexual misconduct, shall immediately report the
437 incident to the department's central abuse hotline and to the
438 appropriate local law enforcement agency. Such employee shall
439 also prepare, date, and sign an independent report that
440 specifically describes the nature of the sexual misconduct, the
441 location and time of the incident, and the persons involved. The
442 employee shall deliver the report to the supervisor or program
443 director, who is responsible for providing copies to the
444 department's inspector general. The inspector general shall
445 immediately conduct an appropriate administrative investigation,
446 and, if there is probable cause to believe that sexual

447 misconduct has occurred, the inspector general shall notify the
448 state attorney in the circuit in which the incident occurred.

449 (6)(a) Any person who is required to make a report under
450 this section and who knowingly or willfully fails to do so, or
451 who knowingly or willfully prevents another person from doing
452 so, commits a misdemeanor of the first degree, punishable as
453 provided in s. 775.082 or s. 775.083.

454 (b) Any person who knowingly or willfully submits
455 inaccurate, incomplete, or untruthful information with respect
456 to a report required under this section commits a misdemeanor of
457 the first degree, punishable as provided in s. 775.082 or s.
458 775.083.

459 (c) Any person who knowingly or willfully coerces or
460 threatens any other person with the intent to alter testimony or
461 a written report regarding an incident of sexual misconduct
462 commits a felony of the third degree, punishable as provided in
463 s. 775.082, s. 775.083, or s. 775.084.

464 (7) The provisions and penalties set forth in this section
465 are in addition to any other civil, administrative, or criminal
466 action provided by law which may be applied against an employee.

467 Section 3. Section 916.1075, Florida Statutes, is created
468 to read:

469 916.1075 Sexual misconduct prohibited; reporting required;
470 penalties.--

471 (1) As used in this section, the term:

472 (a) "Employee" includes any paid staff member, volunteer,
473 or intern of the department; any person under contract with the

474 department; and any person providing care or support to a client
 475 on behalf of the department or its providers.

476 (b) "Sexual activity" means:

477 1. Fondling the genital area, groin, inner thighs,
 478 buttocks, or breasts of a person.

479 2. The oral, anal, or vaginal penetration by or union with
 480 the sexual organ of another or the anal or vaginal penetration
 481 of another by any other object.

482 3. Intentionally touching in a lewd or lascivious manner
 483 the breasts, genitals, the genital area, or buttocks, or the
 484 clothing covering them, of a person, or forcing or enticing a
 485 person to touch the perpetrator.

486 4. Intentionally masturbating in the presence of another
 487 person.

488 5. Intentionally exposing the genitals in a lewd or
 489 lascivious manner in the presence of another person.

490 6. Intentionally committing any other sexual act that does
 491 not involve actual physical or sexual contact with the victim,
 492 including, but not limited to, sadomasochistic abuse, sexual
 493 bestiality, or the simulation of any act involving sexual
 494 activity in the presence of a victim.

495 (c) "Sexual misconduct" means any sexual activity between
 496 an employee and a client, regardless of the consent of the
 497 client. The term does not include an act done for a bona fide
 498 medical purpose or an internal search conducted in the lawful
 499 performance of duty by an employee.

500 (2) An employee who engages in sexual misconduct with a
 501 client who resides in a civil or forensic facility commits a

502 felony of the second degree, punishable as provided in s.
503 775.082, s. 775.083, or s. 775.084. An employee may be found
504 guilty of violating this subsection without having committed the
505 crime of sexual battery.

506 (3) The consent of the client to sexual activity is not a
507 defense to prosecution under this section.

508 (4) This section does not apply to an employee who:

509 (a) Is legally married to the client; or

510 (b) Has no reason to believe that the person with whom the
511 employee engaged in sexual misconduct is a client receiving
512 services as described in subsection (2).

513 (5) An employee who witnesses sexual misconduct, or who
514 otherwise knows or has reasonable cause to suspect that a person
515 has engaged in sexual misconduct, shall immediately report the
516 incident to the department's central abuse hotline and to the
517 appropriate local law enforcement agency. Such employee shall
518 also prepare, date, and sign an independent report that
519 specifically describes the nature of the sexual misconduct, the
520 location and time of the incident, and the persons involved. The
521 employee shall deliver the report to the supervisor or program
522 director, who is responsible for providing copies to the
523 department's inspector general. The inspector general shall
524 immediately conduct an appropriate administrative investigation,
525 and, if there is probable cause to believe that sexual
526 misconduct has occurred, the inspector general shall notify the
527 state attorney in the circuit in which the incident occurred.

528 (6)(a) Any person who is required to make a report under
529 this section and who knowingly or willfully fails to do so, or

530 who knowingly or willfully prevents another person from doing
 531 so, commits a misdemeanor of the first degree, punishable as
 532 provided in s. 775.082 or s. 775.083.

533 (b) Any person who knowingly or willfully submits
 534 inaccurate, incomplete, or untruthful information with respect
 535 to a report required under this section commits a misdemeanor of
 536 the first degree, punishable as provided in s. 775.082 or s.
 537 775.083.

538 (c) Any person who knowingly or willfully coerces or
 539 threatens any other person with the intent to alter testimony or
 540 a written report regarding an incident of sexual misconduct
 541 commits a felony of the third degree, punishable as provided in
 542 s. 775.082, s. 775.083, or s. 775.084.

543 (7) The provisions and penalties set forth in this section
 544 are in addition to any other civil, administrative, or criminal
 545 action provided by law which may be applied against an employee.

546 Section 4. Subsection (2) of section 435.03, Florida
 547 Statutes, is amended to read:

548 435.03 Level 1 screening standards.--

549 (2) Any person for whom employment screening is required
 550 by statute must not have been found guilty of, regardless of
 551 adjudication, or entered a plea of nolo contendere or guilty to,
 552 any offense prohibited under any of the following provisions of
 553 the Florida Statutes or under any similar statute of another
 554 jurisdiction:

555 (a) Section 393.135, relating to sexual misconduct with
 556 certain developmentally disabled clients and reporting of such
 557 sexual misconduct.

558 (b) Section 394.4593, relating to sexual misconduct with
 559 certain mental health patients and reporting of such sexual
 560 misconduct.

561 ~~(c)(a)~~ Section 415.111, relating to abuse, neglect, or
 562 exploitation of a vulnerable adult.

563 ~~(d)(b)~~ Section 782.04, relating to murder.

564 ~~(e)(e)~~ Section 782.07, relating to manslaughter,
 565 aggravated manslaughter of an elderly person or disabled adult,
 566 or aggravated manslaughter of a child.

567 ~~(f)(d)~~ Section 782.071, relating to vehicular homicide.

568 ~~(g)(e)~~ Section 782.09, relating to killing of an unborn
 569 child by injury to the mother.

570 ~~(h)(f)~~ Section 784.011, relating to assault, if the victim
 571 of the offense was a minor.

572 ~~(i)(g)~~ Section 784.021, relating to aggravated assault.

573 ~~(j)(h)~~ Section 784.03, relating to battery, if the victim
 574 of the offense was a minor.

575 ~~(k)(i)~~ Section 784.045, relating to aggravated battery.

576 ~~(l)(j)~~ Section 787.01, relating to kidnapping.

577 ~~(m)(k)~~ Section 787.02, relating to false imprisonment.

578 ~~(n)(l)~~ Section 794.011, relating to sexual battery.

579 ~~(o)(m)~~ Former s. 794.041, relating to prohibited acts of
 580 persons in familial or custodial authority.

581 ~~(p)(n)~~ Chapter 796, relating to prostitution.

582 ~~(q)(o)~~ Section 798.02, relating to lewd and lascivious
 583 behavior.

584 ~~(r)(p)~~ Chapter 800, relating to lewdness and indecent
 585 exposure.

586 ~~(s)~~~~(q)~~ Section 806.01, relating to arson.

587 ~~(t)~~~~(r)~~ Chapter 812, relating to theft, robbery, and

588 related crimes, if the offense was a felony.

589 ~~(u)~~~~(s)~~ Section 817.563, relating to fraudulent sale of

590 controlled substances, only if the offense was a felony.

591 ~~(v)~~~~(t)~~ Section 825.102, relating to abuse, aggravated

592 abuse, or neglect of an elderly person or disabled adult.

593 ~~(w)~~~~(u)~~ Section 825.1025, relating to lewd or lascivious

594 offenses committed upon or in the presence of an elderly person

595 or disabled adult.

596 ~~(x)~~~~(v)~~ Section 825.103, relating to exploitation of an

597 elderly person or disabled adult, if the offense was a felony.

598 ~~(y)~~~~(w)~~ Section 826.04, relating to incest.

599 ~~(z)~~~~(x)~~ Section 827.03, relating to child abuse, aggravated

600 child abuse, or neglect of a child.

601 ~~(aa)~~~~(y)~~ Section 827.04, relating to contributing to the

602 delinquency or dependency of a child.

603 ~~(bb)~~~~(z)~~ Former s. 827.05, relating to negligent treatment

604 of children.

605 ~~(cc)~~~~(aa)~~ Section 827.071, relating to sexual performance

606 by a child.

607 ~~(dd)~~~~(bb)~~ Chapter 847, relating to obscene literature.

608 ~~(ee)~~~~(ee)~~ Chapter 893, relating to drug abuse prevention

609 and control, only if the offense was a felony or if any other

610 person involved in the offense was a minor.

611 (ff) Section 916.0175, relating to sexual misconduct with

612 certain forensic clients and reporting of such sexual

613 misconduct.

614 Section 5. Subsection (2) of section 435.04, Florida
 615 Statutes, is amended to read:

616 435.04 Level 2 screening standards.--

617 (2) The security background investigations under this
 618 section must ensure that no persons subject to the provisions of
 619 this section have been found guilty of, regardless of
 620 adjudication, or entered a plea of nolo contendere or guilty to,
 621 any offense prohibited under any of the following provisions of
 622 the Florida Statutes or under any similar statute of another
 623 jurisdiction:

624 (a) Section 393.135, relating to sexual misconduct with
 625 certain developmentally disabled clients and reporting of such
 626 sexual misconduct.

627 (b) Section 394.4593, relating to sexual misconduct with
 628 certain mental health patients and reporting of such sexual
 629 misconduct.

630 (c)~~(a)~~ Section 415.111, relating to adult abuse, neglect,
 631 or exploitation of aged persons or disabled adults.

632 (d)~~(b)~~ Section 782.04, relating to murder.

633 (e)~~(c)~~ Section 782.07, relating to manslaughter,
 634 aggravated manslaughter of an elderly person or disabled adult,
 635 or aggravated manslaughter of a child.

636 (f)~~(d)~~ Section 782.071, relating to vehicular homicide.

637 (g)~~(e)~~ Section 782.09, relating to killing of an unborn
 638 child by injury to the mother.

639 (h)~~(f)~~ Section 784.011, relating to assault, if the victim
 640 of the offense was a minor.

641 (i)~~(g)~~ Section 784.021, relating to aggravated assault.

642 (j)~~(h)~~ Section 784.03, relating to battery, if the victim
643 of the offense was a minor.

644 (k)~~(i)~~ Section 784.045, relating to aggravated battery.

645 (l)~~(j)~~ Section 784.075, relating to battery on a detention
646 or commitment facility staff.

647 (m)~~(k)~~ Section 787.01, relating to kidnapping.

648 (n)~~(l)~~ Section 787.02, relating to false imprisonment.

649 (o)~~(m)~~ Section 787.04(2), relating to taking, enticing, or
650 removing a child beyond the state limits with criminal intent
651 pending custody proceedings.

652 (p)~~(n)~~ Section 787.04(3), relating to carrying a child
653 beyond the state lines with criminal intent to avoid producing a
654 child at a custody hearing or delivering the child to the
655 designated person.

656 (q)~~(o)~~ Section 790.115(1), relating to exhibiting firearms
657 or weapons within 1,000 feet of a school.

658 (r)~~(p)~~ Section 790.115(2)(b), relating to possessing an
659 electric weapon or device, destructive device, or other weapon
660 on school property.

661 (s)~~(q)~~ Section 794.011, relating to sexual battery.

662 (t)~~(r)~~ Former s. 794.041, relating to prohibited acts of
663 persons in familial or custodial authority.

664 (u)~~(s)~~ Chapter 796, relating to prostitution.

665 (v)~~(t)~~ Section 798.02, relating to lewd and lascivious
666 behavior.

667 (w)~~(u)~~ Chapter 800, relating to lewdness and indecent
668 exposure.

669 (x)~~(v)~~ Section 806.01, relating to arson.

670 ~~(y)(w)~~ Chapter 812, relating to theft, robbery, and
 671 related crimes, if the offense is a felony.

672 ~~(z)(x)~~ Section 817.563, relating to fraudulent sale of
 673 controlled substances, only if the offense was a felony.

674 ~~(aa)(y)~~ Section 825.102, relating to abuse, aggravated
 675 abuse, or neglect of an elderly person or disabled adult.

676 ~~(bb)(z)~~ Section 825.1025, relating to lewd or lascivious
 677 offenses committed upon or in the presence of an elderly person
 678 or disabled adult.

679 ~~(cc)(aa)~~ Section 825.103, relating to exploitation of an
 680 elderly person or disabled adult, if the offense was a felony.

681 ~~(dd)(bb)~~ Section 826.04, relating to incest.

682 ~~(ee)(ee)~~ Section 827.03, relating to child abuse,
 683 aggravated child abuse, or neglect of a child.

684 ~~(ff)(dd)~~ Section 827.04, relating to contributing to the
 685 delinquency or dependency of a child.

686 ~~(gg)(ee)~~ Former s. 827.05, relating to negligent treatment
 687 of children.

688 ~~(hh)(ff)~~ Section 827.071, relating to sexual performance
 689 by a child.

690 ~~(ii)(gg)~~ Section 843.01, relating to resisting arrest with
 691 violence.

692 ~~(jj)(hh)~~ Section 843.025, relating to depriving a law
 693 enforcement, correctional, or correctional probation officer
 694 means of protection or communication.

695 ~~(kk)(ii)~~ Section 843.12, relating to aiding in an escape.

696 ~~(ll)(jj)~~ Section 843.13, relating to aiding in the escape
 697 of juvenile inmates in correctional institutions.

698 ~~(mm)~~~~(kk)~~ Chapter 847, relating to obscene literature.

699 (nn)~~(ll)~~ Section 874.05(1), relating to encouraging or
700 recruiting another to join a criminal gang.

701 ~~(oo)~~~~(mm)~~ Chapter 893, relating to drug abuse prevention
702 and control, only if the offense was a felony or if any other
703 person involved in the offense was a minor.

704 (pp) Section 916.0175, relating to sexual misconduct with
705 certain forensic clients and reporting of such sexual
706 misconduct.

707 ~~(qq)~~~~(nn)~~ Section 944.35(3), relating to inflicting cruel
708 or inhuman treatment on an inmate resulting in great bodily
709 harm.

710 ~~(rr)~~~~(oo)~~ Section 944.46, relating to harboring,
711 concealing, or aiding an escaped prisoner.

712 (ss)~~(pp)~~ Section 944.47, relating to introduction of
713 contraband into a correctional facility.

714 ~~(tt)~~~~(qq)~~ Section 985.4045, relating to sexual misconduct
715 in juvenile justice programs.

716 (uu)~~(rr)~~ Section 985.4046, relating to contraband
717 introduced into detention facilities.

718 Section 6. For the purpose of incorporating the amendment
719 to section 435.04, Florida Statutes, in references thereto,
720 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (6) of
721 section 393.067, Florida Statutes, are reenacted to read:

722 393.067 Licensure of residential facilities and
723 comprehensive transitional education programs.--

724 (6) Each applicant for licensure as an intermediate care
725 facility for the developmentally disabled must comply with the
726 following requirements:

727 (a) Upon receipt of a completed, signed, and dated
728 application, the agency shall require background screening, in
729 accordance with the level 2 standards for screening set forth in
730 chapter 435, of the managing employee, or other similarly titled
731 individual who is responsible for the daily operation of the
732 facility, and of the financial officer, or other similarly
733 titled individual who is responsible for the financial operation
734 of the center, including billings for resident care and
735 services. The applicant must comply with the procedures for
736 level 2 background screening as set forth in chapter 435, as
737 well as the requirements of s. 435.03(3).

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

743 (c) Proof of compliance with the level 2 background
744 screening requirements of chapter 435 which has been submitted
745 within the previous 5 years in compliance with any other health
746 care licensure requirements of this state is acceptable in
747 fulfillment of the requirements of paragraph (a).

748 (d) A provisional license may be granted to an applicant
749 when each individual required by this section to undergo
750 background screening has met the standards for the Department of
751 Law Enforcement background check, but the agency has not yet

752 received background screening results from the Federal Bureau of
753 Investigation, or a request for a disqualification exemption has
754 been submitted to the agency as set forth in chapter 435, but a
755 response has not yet been issued. A standard license may be
756 granted to the applicant upon the agency's receipt of a report
757 of the results of the Federal Bureau of Investigation background
758 screening for each individual required by this section to
759 undergo background screening which confirms that all standards
760 have been met, or upon the granting of a disqualification
761 exemption by the agency as set forth in chapter 435. Any other
762 person who is required to undergo level 2 background screening
763 may serve in his or her capacity pending the agency's receipt of
764 the report from the Federal Bureau of Investigation. However,
765 the person may not continue to serve if the report indicates any
766 violation of background screening standards and a
767 disqualification exemption has not been requested of and granted
768 by the agency as set forth in chapter 435.

769 (f) Each applicant must submit to the agency a description
770 and explanation of any conviction of an offense prohibited under
771 the level 2 standards of chapter 435 by a member of the board of
772 directors of the applicant, its officers, or any individual
773 owning 5 percent or more of the applicant. This requirement does
774 not apply to a director of a not-for-profit corporation or
775 organization if the director serves solely in a voluntary
776 capacity for the corporation or organization, does not regularly
777 take part in the day-to-day operational decisions of the
778 corporation or organization, receives no remuneration for his or
779 her services on the corporation or organization's board of

780 | directors, and has no financial interest and has no family
 781 | members with a financial interest in the corporation or
 782 | organization, provided that the director and the not-for-profit
 783 | corporation or organization include in the application a
 784 | statement affirming that the director's relationship to the
 785 | corporation satisfies the requirements of this paragraph.

786 | (g) A license may not be granted to an applicant if the
 787 | applicant or managing employee has been found guilty of,
 788 | regardless of adjudication, or has entered a plea of nolo
 789 | contendere or guilty to, any offense prohibited under the level
 790 | 2 standards for screening set forth in chapter 435, unless an
 791 | exemption from disqualification has been granted by the agency
 792 | as set forth in chapter 435.

793 | Section 7. Paragraph (a) of subsection (1) of section
 794 | 394.4572, Florida Statutes, is amended to read:

795 | 394.4572 Screening of mental health personnel.--

796 | (1)(a) The department and the Agency for Health Care
 797 | Administration shall require employment screening for mental
 798 | health personnel using the standards for level 2 screening set
 799 | forth in chapter 435. "Mental health personnel" includes all
 800 | program directors, professional clinicians, staff members, and
 801 | volunteers working in public or private mental health programs
 802 | and facilities who have direct contact with unmarried patients
 803 | under the age of 18 years. For purposes of this chapter,
 804 | employment screening of mental health personnel shall also
 805 | include, but is not limited to, employment screening as provided
 806 | under chapter 435.

807 Section 8. Section 943.0585, Florida Statutes, is amended
808 to read:
809 943.0585 Court-ordered expunction of criminal history
810 records.--The courts of this state have jurisdiction over their
811 own procedures, including the maintenance, expunction, and
812 correction of judicial records containing criminal history
813 information to the extent such procedures are not inconsistent
814 with the conditions, responsibilities, and duties established by
815 this section. Any court of competent jurisdiction may order a
816 criminal justice agency to expunge the criminal history record
817 of a minor or an adult who complies with the requirements of
818 this section. The court shall not order a criminal justice
819 agency to expunge a criminal history record until the person
820 seeking to expunge a criminal history record has applied for and
821 received a certificate of eligibility for expunction pursuant to
822 subsection (2). A criminal history record that relates to a
823 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
824 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
825 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
826 s. 916.1075, or a violation enumerated in s. 907.041 may not be
827 expunged, without regard to whether adjudication was withheld,
828 if the defendant was found guilty of or pled guilty or nolo
829 contendere to the offense, or if the defendant, as a minor, was
830 found to have committed, or pled guilty or nolo contendere to
831 committing, the offense as a delinquent act. The court may only
832 order expunction of a criminal history record pertaining to one
833 arrest or one incident of alleged criminal activity, except as
834 provided in this section. The court may, at its sole discretion,

835 | order the expunction of a criminal history record pertaining to
836 | more than one arrest if the additional arrests directly relate
837 | to the original arrest. If the court intends to order the
838 | expunction of records pertaining to such additional arrests,
839 | such intent must be specified in the order. A criminal justice
840 | agency may not expunge any record pertaining to such additional
841 | arrests if the order to expunge does not articulate the
842 | intention of the court to expunge a record pertaining to more
843 | than one arrest. This section does not prevent the court from
844 | ordering the expunction of only a portion of a criminal history
845 | record pertaining to one arrest or one incident of alleged
846 | criminal activity. Notwithstanding any law to the contrary, a
847 | criminal justice agency may comply with laws, court orders, and
848 | official requests of other jurisdictions relating to expunction,
849 | correction, or confidential handling of criminal history records
850 | or information derived therefrom. This section does not confer
851 | any right to the expunction of any criminal history record, and
852 | any request for expunction of a criminal history record may be
853 | denied at the sole discretion of the court.

854 | (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each
855 | petition to a court to expunge a criminal history record is
856 | complete only when accompanied by:

857 | (a) A certificate of eligibility for expunction issued by
858 | the department pursuant to subsection (2).

859 | (b) The petitioner's sworn statement attesting that the
860 | petitioner:

861 | 1. Has never, prior to the date on which the petition is
862 | filed, been adjudicated guilty of a criminal offense or

863 comparable ordinance violation or adjudicated delinquent for
 864 committing a felony or a misdemeanor specified in s.
 865 943.051(3)(b).

866 2. Has not been adjudicated guilty of, or adjudicated
 867 delinquent for committing, any of the acts stemming from the
 868 arrest or alleged criminal activity to which the petition
 869 pertains.

870 3. Has never secured a prior sealing or expunction of a
 871 criminal history record under this section, former s. 893.14,
 872 former s. 901.33, or former s. 943.058, or from any jurisdiction
 873 outside the state.

874 4. Is eligible for such an expunction to the best of his
 875 or her knowledge or belief and does not have any other petition
 876 to expunge or any petition to seal pending before any court.

877
 878 Any person who knowingly provides false information on such
 879 sworn statement to the court commits a felony of the third
 880 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 881 775.084.

882 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
 883 petitioning the court to expunge a criminal history record, a
 884 person seeking to expunge a criminal history record shall apply
 885 to the department for a certificate of eligibility for
 886 expunction. The department shall, by rule adopted pursuant to
 887 chapter 120, establish procedures pertaining to the application
 888 for and issuance of certificates of eligibility for expunction.
 889 The department shall issue a certificate of eligibility for

890 | expunction to a person who is the subject of a criminal history
 891 | record if that person:

892 | (a) Has obtained, and submitted to the department, a
 893 | written, certified statement from the appropriate state attorney
 894 | or statewide prosecutor which indicates:

895 | 1. That an indictment, information, or other charging
 896 | document was not filed or issued in the case.

897 | 2. That an indictment, information, or other charging
 898 | document, if filed or issued in the case, was dismissed or nolle
 899 | prosequi by the state attorney or statewide prosecutor, or was
 900 | dismissed by a court of competent jurisdiction.

901 | 3. That the criminal history record does not relate to a
 902 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 903 | s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
 904 | chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 905 | s. 916.1075, or a violation enumerated in s. 907.041, where the
 906 | defendant was found guilty of, or pled guilty or nolo contendere
 907 | to any such offense, or that the defendant, as a minor, was
 908 | found to have committed, or pled guilty or nolo contendere to
 909 | committing, such an offense as a delinquent act, without regard
 910 | to whether adjudication was withheld.

911 | (b) Remits a \$75 processing fee to the department for
 912 | placement in the Department of Law Enforcement Operating Trust
 913 | Fund, unless such fee is waived by the executive director.

914 | (c) Has submitted to the department a certified copy of
 915 | the disposition of the charge to which the petition to expunge
 916 | pertains.

917 (d) Has never, prior to the date on which the application
 918 for a certificate of eligibility is filed, been adjudicated
 919 guilty of a criminal offense or comparable ordinance violation
 920 or adjudicated delinquent for committing a felony or a
 921 misdemeanor specified in s. 943.051(3)(b).

922 (e) Has not been adjudicated guilty of, or adjudicated
 923 delinquent for committing, any of the acts stemming from the
 924 arrest or alleged criminal activity to which the petition to
 925 expunge pertains.

926 (f) Has never secured a prior sealing or expunction of a
 927 criminal history record under this section, former s. 893.14,
 928 former s. 901.33, or former s. 943.058.

929 (g) Is no longer under court supervision applicable to the
 930 disposition of the arrest or alleged criminal activity to which
 931 the petition to expunge pertains.

932 (h) Is not required to wait a minimum of 10 years prior to
 933 being eligible for an expunction of such records because all
 934 charges related to the arrest or criminal activity to which the
 935 petition to expunge pertains were dismissed prior to trial,
 936 adjudication, or the withholding of adjudication. Otherwise,
 937 such criminal history record must be sealed under this section,
 938 former s. 893.14, former s. 901.33, or former s. 943.058 for at
 939 least 10 years before such record is eligible for expunction.

940 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

941 (a) In judicial proceedings under this section, a copy of
 942 the completed petition to expunge shall be served upon the
 943 appropriate state attorney or the statewide prosecutor and upon
 944 the arresting agency; however, it is not necessary to make any

945 | agency other than the state a party. The appropriate state
946 | attorney or the statewide prosecutor and the arresting agency
947 | may respond to the court regarding the completed petition to
948 | expunge.

949 | (b) If relief is granted by the court, the clerk of the
950 | court shall certify copies of the order to the appropriate state
951 | attorney or the statewide prosecutor and the arresting agency.
952 | The arresting agency is responsible for forwarding the order to
953 | any other agency to which the arresting agency disseminated the
954 | criminal history record information to which the order pertains.
955 | The department shall forward the order to expunge to the Federal
956 | Bureau of Investigation. The clerk of the court shall certify a
957 | copy of the order to any other agency which the records of the
958 | court reflect has received the criminal history record from the
959 | court.

960 | (c) For an order to expunge entered by a court prior to
961 | July 1, 1992, the department shall notify the appropriate state
962 | attorney or statewide prosecutor of an order to expunge which is
963 | contrary to law because the person who is the subject of the
964 | record has previously been convicted of a crime or comparable
965 | ordinance violation or has had a prior criminal history record
966 | sealed or expunged. Upon receipt of such notice, the appropriate
967 | state attorney or statewide prosecutor shall take action, within
968 | 60 days, to correct the record and petition the court to void
969 | the order to expunge. The department shall seal the record until
970 | such time as the order is voided by the court.

971 | (d) On or after July 1, 1992, the department or any other
972 | criminal justice agency is not required to act on an order to

973 expunge entered by a court when such order does not comply with
974 the requirements of this section. Upon receipt of such an order,
975 the department must notify the issuing court, the appropriate
976 state attorney or statewide prosecutor, the petitioner or the
977 petitioner's attorney, and the arresting agency of the reason
978 for noncompliance. The appropriate state attorney or statewide
979 prosecutor shall take action within 60 days to correct the
980 record and petition the court to void the order. No cause of
981 action, including contempt of court, shall arise against any
982 criminal justice agency for failure to comply with an order to
983 expunge when the petitioner for such order failed to obtain the
984 certificate of eligibility as required by this section or such
985 order does not otherwise comply with the requirements of this
986 section.

987 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
988 criminal history record of a minor or an adult which is ordered
989 expunged by a court of competent jurisdiction pursuant to this
990 section must be physically destroyed or obliterated by any
991 criminal justice agency having custody of such record; except
992 that any criminal history record in the custody of the
993 department must be retained in all cases. A criminal history
994 record ordered expunged that is retained by the department is
995 confidential and exempt from the provisions of s. 119.07(1) and
996 s. 24(a), Art. I of the State Constitution and not available to
997 any person or entity except upon order of a court of competent
998 jurisdiction. A criminal justice agency may retain a notation
999 indicating compliance with an order to expunge.

1000 (a) The person who is the subject of a criminal history
 1001 record that is expunged under this section or under other
 1002 provisions of law, including former s. 893.14, former s. 901.33,
 1003 and former s. 943.058, may lawfully deny or fail to acknowledge
 1004 the arrests covered by the expunged record, except when the
 1005 subject of the record:

- 1006 1. Is a candidate for employment with a criminal justice
 1007 agency;
- 1008 2. Is a defendant in a criminal prosecution;
- 1009 3. Concurrently or subsequently petitions for relief under
 1010 this section or s. 943.059;
- 1011 4. Is a candidate for admission to The Florida Bar;
- 1012 5. Is seeking to be employed or licensed by or to contract
 1013 with the Department of Children and Family Services or the
 1014 Department of Juvenile Justice or to be employed or used by such
 1015 contractor or licensee in a sensitive position having direct
 1016 contact with children, the developmentally disabled, the aged,
 1017 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
 1018 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1019 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
 1020 985.407, or chapter 400; or
- 1021 6. Is seeking to be employed or licensed by the Office of
 1022 Teacher Education, Certification, Staff Development, and
 1023 Professional Practices of the Department of Education, any
 1024 district school board, or any local governmental entity that
 1025 licenses child care facilities.

1026 (b) Subject to the exceptions in paragraph (a), a person
 1027 who has been granted an expunction under this section, former s.

1028 893.14, former s. 901.33, or former s. 943.058 may not be held
1029 under any provision of law of this state to commit perjury or to
1030 be otherwise liable for giving a false statement by reason of
1031 such person's failure to recite or acknowledge an expunged
1032 criminal history record.

1033 (c) Information relating to the existence of an expunged
1034 criminal history record which is provided in accordance with
1035 paragraph (a) is confidential and exempt from the provisions of
1036 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
1037 except that the department shall disclose the existence of a
1038 criminal history record ordered expunged to the entities set
1039 forth in subparagraphs (a)1., 4., 5., and 6. for their
1040 respective licensing and employment purposes, and to criminal
1041 justice agencies for their respective criminal justice purposes.
1042 It is unlawful for any employee of an entity set forth in
1043 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or
1044 subparagraph (a)6. to disclose information relating to the
1045 existence of an expunged criminal history record of a person
1046 seeking employment or licensure with such entity or contractor,
1047 except to the person to whom the criminal history record relates
1048 or to persons having direct responsibility for employment or
1049 licensure decisions. Any person who violates this paragraph
1050 commits a misdemeanor of the first degree, punishable as
1051 provided in s. 775.082 or s. 775.083.

1052 (5) STATUTORY REFERENCES.--Any reference to any other
1053 chapter, section, or subdivision of the Florida Statutes in this
1054 section constitutes a general reference under the doctrine of
1055 incorporation by reference.

1056 Section 9. Section 943.059, Florida Statutes, is amended
 1057 to read:

1058 943.059 Court-ordered sealing of criminal history
 1059 records.--The courts of this state shall continue to have
 1060 jurisdiction over their own procedures, including the
 1061 maintenance, sealing, and correction of judicial records
 1062 containing criminal history information to the extent such
 1063 procedures are not inconsistent with the conditions,
 1064 responsibilities, and duties established by this section. Any
 1065 court of competent jurisdiction may order a criminal justice
 1066 agency to seal the criminal history record of a minor or an
 1067 adult who complies with the requirements of this section. The
 1068 court shall not order a criminal justice agency to seal a
 1069 criminal history record until the person seeking to seal a
 1070 criminal history record has applied for and received a
 1071 certificate of eligibility for sealing pursuant to subsection
 1072 (2). A criminal history record that relates to a violation of s.
 1073 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 1074 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 1075 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
 1076 a violation enumerated in s. 907.041 may not be sealed, without
 1077 regard to whether adjudication was withheld, if the defendant
 1078 was found guilty of or pled guilty or nolo contendere to the
 1079 offense, or if the defendant, as a minor, was found to have
 1080 committed or pled guilty or nolo contendere to committing the
 1081 offense as a delinquent act. The court may only order sealing of
 1082 a criminal history record pertaining to one arrest or one
 1083 incident of alleged criminal activity, except as provided in

1084 | this section. The court may, at its sole discretion, order the
 1085 | sealing of a criminal history record pertaining to more than one
 1086 | arrest if the additional arrests directly relate to the original
 1087 | arrest. If the court intends to order the sealing of records
 1088 | pertaining to such additional arrests, such intent must be
 1089 | specified in the order. A criminal justice agency may not seal
 1090 | any record pertaining to such additional arrests if the order to
 1091 | seal does not articulate the intention of the court to seal
 1092 | records pertaining to more than one arrest. This section does
 1093 | not prevent the court from ordering the sealing of only a
 1094 | portion of a criminal history record pertaining to one arrest or
 1095 | one incident of alleged criminal activity. Notwithstanding any
 1096 | law to the contrary, a criminal justice agency may comply with
 1097 | laws, court orders, and official requests of other jurisdictions
 1098 | relating to sealing, correction, or confidential handling of
 1099 | criminal history records or information derived therefrom. This
 1100 | section does not confer any right to the sealing of any criminal
 1101 | history record, and any request for sealing a criminal history
 1102 | record may be denied at the sole discretion of the court.

1103 | (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
 1104 | petition to a court to seal a criminal history record is
 1105 | complete only when accompanied by:

1106 | (a) A certificate of eligibility for sealing issued by the
 1107 | department pursuant to subsection (2).

1108 | (b) The petitioner's sworn statement attesting that the
 1109 | petitioner:

1110 | 1. Has never, prior to the date on which the petition is
 1111 | filed, been adjudicated guilty of a criminal offense or

1112 comparable ordinance violation or adjudicated delinquent for
 1113 committing a felony or a misdemeanor specified in s.
 1114 943.051(3)(b).

1115 2. Has not been adjudicated guilty of or adjudicated
 1116 delinquent for committing any of the acts stemming from the
 1117 arrest or alleged criminal activity to which the petition to
 1118 seal pertains.

1119 3. Has never secured a prior sealing or expunction of a
 1120 criminal history record under this section, former s. 893.14,
 1121 former s. 901.33, former s. 943.058, or from any jurisdiction
 1122 outside the state.

1123 4. Is eligible for such a sealing to the best of his or
 1124 her knowledge or belief and does not have any other petition to
 1125 seal or any petition to expunge pending before any court.

1126
 1127 Any person who knowingly provides false information on such
 1128 sworn statement to the court commits a felony of the third
 1129 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1130 775.084.

1131 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
 1132 petitioning the court to seal a criminal history record, a
 1133 person seeking to seal a criminal history record shall apply to
 1134 the department for a certificate of eligibility for sealing. The
 1135 department shall, by rule adopted pursuant to chapter 120,
 1136 establish procedures pertaining to the application for and
 1137 issuance of certificates of eligibility for sealing. The
 1138 department shall issue a certificate of eligibility for sealing

1139 | to a person who is the subject of a criminal history record
 1140 | provided that such person:

1141 | (a) Has submitted to the department a certified copy of
 1142 | the disposition of the charge to which the petition to seal
 1143 | pertains.

1144 | (b) Remits a \$75 processing fee to the department for
 1145 | placement in the Department of Law Enforcement Operating Trust
 1146 | Fund, unless such fee is waived by the executive director.

1147 | (c) Has never, prior to the date on which the application
 1148 | for a certificate of eligibility is filed, been adjudicated
 1149 | guilty of a criminal offense or comparable ordinance violation
 1150 | or adjudicated delinquent for committing a felony or a
 1151 | misdemeanor specified in s. 943.051(3)(b).

1152 | (d) Has not been adjudicated guilty of or adjudicated
 1153 | delinquent for committing any of the acts stemming from the
 1154 | arrest or alleged criminal activity to which the petition to
 1155 | seal pertains.

1156 | (e) Has never secured a prior sealing or expunction of a
 1157 | criminal history record under this section, former s. 893.14,
 1158 | former s. 901.33, or former s. 943.058.

1159 | (f) Is no longer under court supervision applicable to the
 1160 | disposition of the arrest or alleged criminal activity to which
 1161 | the petition to seal pertains.

1162 | (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

1163 | (a) In judicial proceedings under this section, a copy of
 1164 | the completed petition to seal shall be served upon the
 1165 | appropriate state attorney or the statewide prosecutor and upon
 1166 | the arresting agency; however, it is not necessary to make any

1167 | agency other than the state a party. The appropriate state
1168 | attorney or the statewide prosecutor and the arresting agency
1169 | may respond to the court regarding the completed petition to
1170 | seal.

1171 | (b) If relief is granted by the court, the clerk of the
1172 | court shall certify copies of the order to the appropriate state
1173 | attorney or the statewide prosecutor and to the arresting
1174 | agency. The arresting agency is responsible for forwarding the
1175 | order to any other agency to which the arresting agency
1176 | disseminated the criminal history record information to which
1177 | the order pertains. The department shall forward the order to
1178 | seal to the Federal Bureau of Investigation. The clerk of the
1179 | court shall certify a copy of the order to any other agency
1180 | which the records of the court reflect has received the criminal
1181 | history record from the court.

1182 | (c) For an order to seal entered by a court prior to July
1183 | 1, 1992, the department shall notify the appropriate state
1184 | attorney or statewide prosecutor of any order to seal which is
1185 | contrary to law because the person who is the subject of the
1186 | record has previously been convicted of a crime or comparable
1187 | ordinance violation or has had a prior criminal history record
1188 | sealed or expunged. Upon receipt of such notice, the appropriate
1189 | state attorney or statewide prosecutor shall take action, within
1190 | 60 days, to correct the record and petition the court to void
1191 | the order to seal. The department shall seal the record until
1192 | such time as the order is voided by the court.

1193 | (d) On or after July 1, 1992, the department or any other
1194 | criminal justice agency is not required to act on an order to

1195 seal entered by a court when such order does not comply with the
1196 requirements of this section. Upon receipt of such an order, the
1197 department must notify the issuing court, the appropriate state
1198 attorney or statewide prosecutor, the petitioner or the
1199 petitioner's attorney, and the arresting agency of the reason
1200 for noncompliance. The appropriate state attorney or statewide
1201 prosecutor shall take action within 60 days to correct the
1202 record and petition the court to void the order. No cause of
1203 action, including contempt of court, shall arise against any
1204 criminal justice agency for failure to comply with an order to
1205 seal when the petitioner for such order failed to obtain the
1206 certificate of eligibility as required by this section or when
1207 such order does not comply with the requirements of this
1208 section.

1209 (e) An order sealing a criminal history record pursuant to
1210 this section does not require that such record be surrendered to
1211 the court, and such record shall continue to be maintained by
1212 the department and other criminal justice agencies.

1213 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1214 history record of a minor or an adult which is ordered sealed by
1215 a court of competent jurisdiction pursuant to this section is
1216 confidential and exempt from the provisions of s. 119.07(1) and
1217 s. 24(a), Art. I of the State Constitution and is available only
1218 to the person who is the subject of the record, to the subject's
1219 attorney, to criminal justice agencies for their respective
1220 criminal justice purposes, or to those entities set forth in
1221 subparagraphs (a)1., 4., 5., and 6. for their respective
1222 licensing and employment purposes.

1223 (a) The subject of a criminal history record sealed under
1224 this section or under other provisions of law, including former
1225 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
1226 deny or fail to acknowledge the arrests covered by the sealed
1227 record, except when the subject of the record:

1228 1. Is a candidate for employment with a criminal justice
1229 agency;

1230 2. Is a defendant in a criminal prosecution;

1231 3. Concurrently or subsequently petitions for relief under
1232 this section or s. 943.0585;

1233 4. Is a candidate for admission to The Florida Bar;

1234 5. Is seeking to be employed or licensed by or to contract
1235 with the Department of Children and Family Services or the
1236 Department of Juvenile Justice or to be employed or used by such
1237 contractor or licensee in a sensitive position having direct
1238 contact with children, the developmentally disabled, the aged,
1239 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
1240 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
1241 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
1242 (13), s. 985.407, or chapter 400; or

1243 6. Is seeking to be employed or licensed by the Office of
1244 Teacher Education, Certification, Staff Development, and
1245 Professional Practices of the Department of Education, any
1246 district school board, or any local governmental entity which
1247 licenses child care facilities.

1248 (b) Subject to the exceptions in paragraph (a), a person
1249 who has been granted a sealing under this section, former s.
1250 893.14, former s. 901.33, or former s. 943.058 may not be held

1251 | under any provision of law of this state to commit perjury or to
1252 | be otherwise liable for giving a false statement by reason of
1253 | such person's failure to recite or acknowledge a sealed criminal
1254 | history record.

1255 | (c) Information relating to the existence of a sealed
1256 | criminal record provided in accordance with the provisions of
1257 | paragraph (a) is confidential and exempt from the provisions of
1258 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
1259 | except that the department shall disclose the sealed criminal
1260 | history record to the entities set forth in subparagraphs (a)1.,
1261 | 4., 5., and 6. for their respective licensing and employment
1262 | purposes. It is unlawful for any employee of an entity set forth
1263 | in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5.,
1264 | or subparagraph (a)6. to disclose information relating to the
1265 | existence of a sealed criminal history record of a person
1266 | seeking employment or licensure with such entity or contractor,
1267 | except to the person to whom the criminal history record relates
1268 | or to persons having direct responsibility for employment or
1269 | licensure decisions. Any person who violates the provisions of
1270 | this paragraph commits a misdemeanor of the first degree,
1271 | punishable as provided in s. 775.082 or s. 775.083.

1272 | (5) STATUTORY REFERENCES.--Any reference to any other
1273 | chapter, section, or subdivision of the Florida Statutes in this
1274 | section constitutes a general reference under the doctrine of
1275 | incorporation by reference.

1276 | Section 10. Paragraph (a) of subsection (2) of section
1277 | 400.215, Florida Statutes, is amended, and paragraphs (b) and
1278 | (c) of subsection (2) and subsection (3) of said section are

1279 reenacted for the purpose of incorporating the amendments to
 1280 sections 435.03 and 435.04, Florida Statutes, in references
 1281 thereto, to read:

1282 400.215 Personnel screening requirement.--

1283 (2) Employers and employees shall comply with the
 1284 requirements of s. 435.05.

1285 (a) Notwithstanding the provisions of s. 435.05(1),
 1286 facilities must have in their possession evidence that level 1
 1287 screening has been completed before allowing an employee to
 1288 begin working with patients as provided in subsection (1). All
 1289 information necessary for conducting background screening using
 1290 level 1 standards as specified in s. 435.03~~(1)~~ shall be
 1291 submitted by the nursing facility to the agency. Results of the
 1292 background screening shall be provided by the agency to the
 1293 requesting nursing facility.

1294 (b) Employees qualified under the provisions of paragraph
 1295 (a) who have not maintained continuous residency within the
 1296 state for the 5 years immediately preceding the date of request
 1297 for background screening must complete level 2 screening, as
 1298 provided in chapter 435. Such employees may work in a
 1299 conditional status up to 180 days pending the receipt of written
 1300 findings evidencing the completion of level 2 screening. Level 2
 1301 screening shall not be required of employees or prospective
 1302 employees who attest in writing under penalty of perjury that
 1303 they meet the residency requirement. Completion of level 2
 1304 screening shall require the employee or prospective employee to
 1305 furnish to the nursing facility a full set of fingerprints to
 1306 enable a criminal background investigation to be conducted. The

1307 nursing facility shall submit the completed fingerprint card to
1308 the agency. The agency shall establish a record of the request
1309 in the database provided for in paragraph (c) and forward the
1310 request to the Department of Law Enforcement, which is
1311 authorized to submit the fingerprints to the Federal Bureau of
1312 Investigation for a national criminal history records check. The
1313 results of the national criminal history records check shall be
1314 returned to the agency, which shall maintain the results in the
1315 database provided for in paragraph (c). The agency shall notify
1316 the administrator of the requesting nursing facility or the
1317 administrator of any other facility licensed under chapter 393,
1318 chapter 394, chapter 395, chapter 397, or this chapter, as
1319 requested by such facility, as to whether or not the employee
1320 has qualified under level 1 or level 2 screening. An employee or
1321 prospective employee who has qualified under level 2 screening
1322 and has maintained such continuous residency within the state
1323 shall not be required to complete a subsequent level 2 screening
1324 as a condition of employment at another facility.

1325 (c) The agency shall establish and maintain a database of
1326 background screening information which shall include the results
1327 of both level 1 and level 2 screening. The Department of Law
1328 Enforcement shall timely provide to the agency, electronically,
1329 the results of each statewide screening for incorporation into
1330 the database. The agency shall, upon request from any facility,
1331 agency, or program required by or authorized by law to screen
1332 its employees or applicants, notify the administrator of the
1333 facility, agency, or program of the qualifying or disqualifying
1334 status of the employee or applicant named in the request.

1335 (3) The applicant is responsible for paying the fees
 1336 associated with obtaining the required screening. Payment for
 1337 the screening shall be submitted to the agency. The agency shall
 1338 establish a schedule of fees to cover the costs of level 1 and
 1339 level 2 screening. Facilities may reimburse employees for these
 1340 costs. The Department of Law Enforcement shall charge the agency
 1341 for a level 1 or level 2 screening a rate sufficient to cover
 1342 the costs of such screening pursuant to s. 943.053(3). The
 1343 agency shall, as allowable, reimburse nursing facilities for the
 1344 cost of conducting background screening as required by this
 1345 section. This reimbursement will not be subject to any rate
 1346 ceilings or payment targets in the Medicaid Reimbursement plan.

1347 Section 11. For the purpose of incorporating the
 1348 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1349 references thereto, subsections (1) and (2) of section 400.964,
 1350 Florida Statutes, are reenacted, and subsection (7) of said
 1351 section is amended and reenacted, to read:

1352 400.964 Personnel screening requirement.--

1353 (1) The agency shall require level 2 background screening
 1354 as provided in chapter 435 for all employees or prospective
 1355 employees of facilities licensed under this part who are
 1356 expected to be, or whose responsibilities are such that they
 1357 would be considered to be, a direct service provider.

1358 (2) Employers and employees shall comply with the
 1359 requirements of chapter 435.

1360 (7) All employees must comply with the requirements of
 1361 this section by October 1, 2000. A person employed by a facility
 1362 licensed pursuant to this part as of the effective date of this

1363 act is not required to submit to rescreening if the facility has
 1364 in its possession written evidence that the person has been
 1365 screened and qualified according to level 1 standards as
 1366 specified in s. 435.03~~(1)~~. Any current employee who meets the
 1367 level 1 requirement but does not meet the 5-year residency
 1368 requirement must provide to the employing facility written
 1369 attestation under penalty of perjury that the employee has not
 1370 been convicted of a disqualifying offense in another state or
 1371 jurisdiction. All applicants hired on or after October 1, 1999,
 1372 must comply with the requirements of this section.

1373 Section 12. For the purpose of incorporating the amendment
 1374 to section 435.04, Florida Statutes, in a reference thereto,
 1375 paragraph (a) of subsection (1) of section 435.045, Florida
 1376 Statutes, is amended and reenacted to read:

1377 435.045 Requirements for placement of dependent
 1378 children.--

1379 (1)(a) Unless an election provided for in subsection (2)
 1380 is made with respect to the state, the department is authorized
 1381 to conduct criminal records checks equivalent to the level 2
 1382 screening required in s. 435.04~~(1)~~ for any person being
 1383 considered by the department for placement of a child subject to
 1384 a placement decision pursuant to chapter 39. Approval shall not
 1385 be granted:

1386 1. In any case in which a record check reveals a felony
 1387 conviction for child abuse, abandonment, or neglect; for spousal
 1388 abuse; for a crime against children, including child
 1389 pornography, or for a crime involving violence, including rape,
 1390 sexual assault, or homicide but not including other physical

1391 assault or battery, if the department finds that a court of
 1392 competent jurisdiction has determined that the felony was
 1393 committed at any time; and

1394 2. In any case in which a record check reveals a felony
 1395 conviction for physical assault, battery, or a drug-related
 1396 offense, if the department finds that a court of competent
 1397 jurisdiction has determined that the felony was committed within
 1398 the past 5 years.

1399 Section 13. For the purpose of incorporating the
 1400 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1401 references thereto, paragraphs (f) and (g) of subsection (1) of
 1402 section 400.414, Florida Statutes, are reenacted to read:

1403 400.414 Denial, revocation, or suspension of license;
 1404 imposition of administrative fine; grounds.--

1405 (1) The agency may deny, revoke, or suspend any license
 1406 issued under this part, or impose an administrative fine in the
 1407 manner provided in chapter 120, for any of the following actions
 1408 by an assisted living facility, for the actions of any person
 1409 subject to level 2 background screening under s. 400.4174, or
 1410 for the actions of any facility employee:

1411 (f) A determination that a person subject to level 2
 1412 background screening under s. 400.4174(1) does not meet the
 1413 screening standards of s. 435.04 or that the facility is
 1414 retaining an employee subject to level 1 background screening
 1415 standards under s. 400.4174(2) who does not meet the screening
 1416 standards of s. 435.03 and for whom exemptions from
 1417 disqualification have not been provided by the agency.

1418 (g) A determination that an employee, volunteer,
 1419 administrator, or owner, or person who otherwise has access to
 1420 the residents of a facility does not meet the criteria specified
 1421 in s. 435.03(2), and the owner or administrator has not taken
 1422 action to remove the person. Exemptions from disqualification
 1423 may be granted as set forth in s. 435.07. No administrative
 1424 action may be taken against the facility if the person is
 1425 granted an exemption.

1426
 1427 Administrative proceedings challenging agency action under this
 1428 subsection shall be reviewed on the basis of the facts and
 1429 conditions that resulted in the agency action.

1430 Section 14. For the purpose of incorporating the
 1431 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1432 references thereto, section 400.4174, Florida Statutes, is
 1433 reenacted to read:

1434 400.4174 Background screening; exemptions.--

1435 (1)(a) Level 2 background screening must be conducted on
 1436 each of the following persons, who shall be considered employees
 1437 for the purposes of conducting screening under chapter 435:

1438 1. The facility owner if an individual, the administrator,
 1439 and the financial officer.

1440 2. An officer or board member if the facility owner is a
 1441 firm, corporation, partnership, or association, or any person
 1442 owning 5 percent or more of the facility if the agency has
 1443 probable cause to believe that such person has been convicted of
 1444 any offense prohibited by s. 435.04. For each officer, board
 1445 member, or person owning 5 percent or more who has been

1446 convicted of any such offense, the facility shall submit to the
1447 agency a description and explanation of the conviction at the
1448 time of license application. This subparagraph does not apply to
1449 a board member of a not-for-profit corporation or organization
1450 if the board member serves solely in a voluntary capacity, does
1451 not regularly take part in the day-to-day operational decisions
1452 of the corporation or organization, receives no remuneration for
1453 his or her services, and has no financial interest and has no
1454 family members with a financial interest in the corporation or
1455 organization, provided that the board member and facility submit
1456 a statement affirming that the board member's relationship to
1457 the facility satisfies the requirements of this subparagraph.

1458 (b) Proof of compliance with level 2 screening standards
1459 which has been submitted within the previous 5 years to meet any
1460 facility or professional licensure requirements of the agency or
1461 the Department of Health satisfies the requirements of this
1462 subsection, provided that such proof is accompanied, under
1463 penalty of perjury, by an affidavit of compliance with the
1464 provisions of chapter 435. Proof of compliance with the
1465 background screening requirements of the Financial Services
1466 Commission and the Office of Insurance Regulation for applicants
1467 for a certificate of authority to operate a continuing care
1468 retirement community under chapter 651, submitted within the
1469 last 5 years, satisfies the Department of Law Enforcement and
1470 Federal Bureau of Investigation portions of a level 2 background
1471 check.

1472 (c) The agency may grant a provisional license to a
1473 facility applying for an initial license when each individual

1474 required by this subsection to undergo screening has completed
1475 the Department of Law Enforcement background checks, but has not
1476 yet received results from the Federal Bureau of Investigation,
1477 or when a request for an exemption from disqualification has
1478 been submitted to the agency pursuant to s. 435.07, but a
1479 response has not been issued.

1480 (2) The owner or administrator of an assisted living
1481 facility must conduct level 1 background screening, as set forth
1482 in chapter 435, on all employees hired on or after October 1,
1483 1998, who perform personal services as defined in s.
1484 400.402(17). The agency may exempt an individual from employment
1485 disqualification as set forth in chapter 435. Such persons shall
1486 be considered as having met this requirement if:

1487 (a) Proof of compliance with level 1 screening
1488 requirements obtained to meet any professional license
1489 requirements in this state is provided and accompanied, under
1490 penalty of perjury, by a copy of the person's current
1491 professional license and an affidavit of current compliance with
1492 the background screening requirements.

1493 (b) The person required to be screened has been
1494 continuously employed in the same type of occupation for which
1495 the person is seeking employment without a breach in service
1496 which exceeds 180 days, and proof of compliance with the level 1
1497 screening requirement which is no more than 2 years old is
1498 provided. Proof of compliance shall be provided directly from
1499 one employer or contractor to another, and not from the person
1500 screened. Upon request, a copy of screening results shall be

1501 provided by the employer retaining documentation of the
 1502 screening to the person screened.

1503 (c) The person required to be screened is employed by a
 1504 corporation or business entity or related corporation or
 1505 business entity that owns, operates, or manages more than one
 1506 facility or agency licensed under this chapter, and for whom a
 1507 level 1 screening was conducted by the corporation or business
 1508 entity as a condition of initial or continued employment.

1509 Section 15. For the purpose of incorporating the
 1510 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1511 references thereto, paragraphs (a), (b), (c), (d), (f), and (g)
 1512 of subsection (4) of section 400.509, Florida Statutes, are
 1513 reenacted to read:

1514 400.509 Registration of particular service providers
 1515 exempt from licensure; certificate of registration; regulation
 1516 of registrants.--

1517 (4) Each applicant for registration must comply with the
 1518 following requirements:

1519 (a) Upon receipt of a completed, signed, and dated
 1520 application, the agency shall require background screening, in
 1521 accordance with the level 1 standards for screening set forth in
 1522 chapter 435, of every individual who will have contact with the
 1523 client. The agency shall require background screening of the
 1524 managing employee or other similarly titled individual who is
 1525 responsible for the operation of the entity, and of the
 1526 financial officer or other similarly titled individual who is
 1527 responsible for the financial operation of the entity, including

1528 | billings for client services in accordance with the level 2
1529 | standards for background screening as set forth in chapter 435.

1530 | (b) The agency may require background screening of any
1531 | other individual who is affiliated with the applicant if the
1532 | agency has a reasonable basis for believing that he or she has
1533 | been convicted of a crime or has committed any other offense
1534 | prohibited under the level 2 standards for screening set forth
1535 | in chapter 435.

1536 | (c) Proof of compliance with the level 2 background
1537 | screening requirements of chapter 435 which has been submitted
1538 | within the previous 5 years in compliance with any other health
1539 | care or assisted living licensure requirements of this state is
1540 | acceptable in fulfillment of paragraph (a).

1541 | (d) A provisional registration may be granted to an
1542 | applicant when each individual required by this section to
1543 | undergo background screening has met the standards for the
1544 | abuse-registry background check through the agency and the
1545 | Department of Law Enforcement background check, but the agency
1546 | has not yet received background screening results from the
1547 | Federal Bureau of Investigation. A standard registration may be
1548 | granted to the applicant upon the agency's receipt of a report
1549 | of the results of the Federal Bureau of Investigation background
1550 | screening for each individual required by this section to
1551 | undergo background screening which confirms that all standards
1552 | have been met, or upon the granting of a disqualification
1553 | exemption by the agency as set forth in chapter 435. Any other
1554 | person who is required to undergo level 2 background screening
1555 | may serve in his or her capacity pending the agency's receipt of

1556 | the report from the Federal Bureau of Investigation. However,
1557 | the person may not continue to serve if the report indicates any
1558 | violation of background screening standards and if a
1559 | disqualification exemption has not been requested of and granted
1560 | by the agency as set forth in chapter 435.

1561 | (f) Each applicant must submit to the agency a description
1562 | and explanation of any conviction of an offense prohibited under
1563 | the level 2 standards of chapter 435 which was committed by a
1564 | member of the board of directors of the applicant, its officers,
1565 | or any individual owning 5 percent or more of the applicant.
1566 | This requirement does not apply to a director of a not-for-
1567 | profit corporation or organization who serves solely in a
1568 | voluntary capacity for the corporation or organization, does not
1569 | regularly take part in the day-to-day operational decisions of
1570 | the corporation or organization, receives no remuneration for
1571 | his or her services on the corporation's or organization's board
1572 | of directors, and has no financial interest and no family
1573 | members having a financial interest in the corporation or
1574 | organization, if the director and the not-for-profit corporation
1575 | or organization include in the application a statement affirming
1576 | that the director's relationship to the corporation satisfies
1577 | the requirements of this paragraph.

1578 | (g) A registration may not be granted to an applicant if
1579 | the applicant or managing employee has been found guilty of,
1580 | regardless of adjudication, or has entered a plea of nolo
1581 | contendere or guilty to, any offense prohibited under the level
1582 | 2 standards for screening set forth in chapter 435, unless an

1583 exemption from disqualification has been granted by the agency
1584 as set forth in chapter 435.

1585 Section 16. For the purpose of incorporating the
1586 amendments to sections 435.03 and 435.04, Florida Statutes, in
1587 references thereto, paragraph (c) of subsection (2) of section
1588 400.556, Florida Statutes, is reenacted to read:

1589 400.556 Denial, suspension, revocation of license;
1590 administrative fines; investigations and inspections.--

1591 (2) Each of the following actions by the owner of an adult
1592 day care center or by its operator or employee is a ground for
1593 action by the agency against the owner of the center or its
1594 operator or employee:

1595 (c) A failure of persons subject to level 2 background
1596 screening under s. 400.4174(1) to meet the screening standards
1597 of s. 435.04, or the retention by the center of an employee
1598 subject to level 1 background screening standards under s.
1599 400.4174(2) who does not meet the screening standards of s.
1600 435.03 and for whom exemptions from disqualification have not
1601 been provided by the agency.

1602 Section 17. For the purpose of incorporating the
1603 amendments to sections 435.03 and 435.04, Florida Statutes, in
1604 references thereto, subsections (1), (2), and (4) of section
1605 400.6065, Florida Statutes, are reenacted to read:

1606 400.6065 Background screening.--

1607 (1) Upon receipt of a completed application under s.
1608 400.606, the agency shall require level 2 background screening
1609 on each of the following persons, who shall be considered

1610 employees for the purposes of conducting screening under chapter
1611 435:

1612 (a) The hospice administrator and financial officer.

1613 (b) An officer or board member if the hospice is a firm,
1614 corporation, partnership, or association, or any person owning 5
1615 percent or more of the hospice if the agency has probable cause
1616 to believe that such officer, board member, or owner has been
1617 convicted of any offense prohibited by s. 435.04. For each
1618 officer, board member, or person owning 5 percent or more who
1619 has been convicted of any such offense, the hospice shall submit
1620 to the agency a description and explanation of the conviction at
1621 the time of license application. This paragraph does not apply
1622 to a board member of a not-for-profit corporation or
1623 organization if the board member serves solely in a voluntary
1624 capacity, does not regularly take part in the day-to-day
1625 operational decisions of the corporation or organization,
1626 receives no remuneration for his or her services, and has no
1627 financial interest and has no family members with a financial
1628 interest in the corporation or organization, provided that the
1629 board member and the corporation or organization submit a
1630 statement affirming that the board member's relationship to the
1631 corporation or organization satisfies the requirements of this
1632 paragraph.

1633 (2) Proof of compliance with level 2 screening standards
1634 which has been submitted within the previous 5 years to meet any
1635 facility or professional licensure requirements of the agency or
1636 the Department of Health satisfies the requirements of this
1637 section.

1638 (4) The agency shall require employment or contractor
 1639 screening as provided in chapter 435, using the level 1
 1640 standards for screening set forth in that chapter, for hospice
 1641 personnel.

1642 Section 18. For the purpose of incorporating the
 1643 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1644 references thereto, paragraphs (a), (b), (c), (d), (f), and (g)
 1645 of subsection (4) of section 400.980, Florida Statutes, are
 1646 reenacted to read:

1647 400.980 Health care services pools.--

1648 (4) Each applicant for registration must comply with the
 1649 following requirements:

1650 (a) Upon receipt of a completed, signed, and dated
 1651 application, the agency shall require background screening, in
 1652 accordance with the level 1 standards for screening set forth in
 1653 chapter 435, of every individual who will have contact with
 1654 patients. The agency shall require background screening of the
 1655 managing employee or other similarly titled individual who is
 1656 responsible for the operation of the entity, and of the
 1657 financial officer or other similarly titled individual who is
 1658 responsible for the financial operation of the entity, including
 1659 billings for services in accordance with the level 2 standards
 1660 for background screening as set forth in chapter 435.

1661 (b) The agency may require background screening of any
 1662 other individual who is affiliated with the applicant if the
 1663 agency has a reasonable basis for believing that he or she has
 1664 been convicted of a crime or has committed any other offense

1665 prohibited under the level 2 standards for screening set forth
1666 in chapter 435.

1667 (c) Proof of compliance with the level 2 background
1668 screening requirements of chapter 435 which has been submitted
1669 within the previous 5 years in compliance with any other health
1670 care or assisted living licensure requirements of this state is
1671 acceptable in fulfillment of paragraph (a).

1672 (d) A provisional registration may be granted to an
1673 applicant when each individual required by this section to
1674 undergo background screening has met the standards for the
1675 Department of Law Enforcement background check but the agency
1676 has not yet received background screening results from the
1677 Federal Bureau of Investigation. A standard registration may be
1678 granted to the applicant upon the agency's receipt of a report
1679 of the results of the Federal Bureau of Investigation background
1680 screening for each individual required by this section to
1681 undergo background screening which confirms that all standards
1682 have been met, or upon the granting of a disqualification
1683 exemption by the agency as set forth in chapter 435. Any other
1684 person who is required to undergo level 2 background screening
1685 may serve in his or her capacity pending the agency's receipt of
1686 the report from the Federal Bureau of Investigation. However,
1687 the person may not continue to serve if the report indicates any
1688 violation of background screening standards and if a
1689 disqualification exemption has not been requested of and granted
1690 by the agency as set forth in chapter 435.

1691 (f) Each applicant must submit to the agency a description
1692 and explanation of any conviction of an offense prohibited under

1693 | the level 2 standards of chapter 435 which was committed by a
1694 | member of the board of directors of the applicant, its officers,
1695 | or any individual owning 5 percent or more of the applicant.
1696 | This requirement does not apply to a director of a not-for-
1697 | profit corporation or organization who serves solely in a
1698 | voluntary capacity for the corporation or organization, does not
1699 | regularly take part in the day-to-day operational decisions of
1700 | the corporation or organization, receives no remuneration for
1701 | his or her services on the corporation's or organization's board
1702 | of directors, and has no financial interest and no family
1703 | members having a financial interest in the corporation or
1704 | organization, if the director and the not-for-profit corporation
1705 | or organization include in the application a statement affirming
1706 | that the director's relationship to the corporation satisfies
1707 | the requirements of this paragraph.

1708 | (g) A registration may not be granted to an applicant if
1709 | the applicant or managing employee has been found guilty of,
1710 | regardless of adjudication, or has entered a plea of nolo
1711 | contendere or guilty to, any offense prohibited under the level
1712 | 2 standards for screening set forth in chapter 435, unless an
1713 | exemption from disqualification has been granted by the agency
1714 | as set forth in chapter 435.

1715 | Section 19. For the purpose of incorporating the
1716 | amendments to sections 435.03 and 435.04, Florida Statutes, in
1717 | references thereto, paragraph (k) of subsection (2) of section
1718 | 409.175, Florida Statutes, is reenacted to read:

1719 409.175 Licensure of family foster homes, residential
 1720 child-caring agencies, and child-placing agencies; public
 1721 records exemption.--

1722 (2) As used in this section, the term:

1723 (k) "Screening" means the act of assessing the background
 1724 of personnel and includes, but is not limited to, employment
 1725 history checks as provided in chapter 435, using the level 2
 1726 standards for screening set forth in that chapter. Screening for
 1727 employees and volunteers in summer day camps and summer 24-hour
 1728 camps and screening for all volunteers included under the
 1729 definition of "personnel" shall be conducted as provided in
 1730 chapter 435, using the level 1 standards set forth in that
 1731 chapter.

1732 Section 20. For the purpose of incorporating the
 1733 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1734 references thereto, paragraph (d) of subsection (8) of section
 1735 409.907, Florida Statutes, is reenacted to read:

1736 409.907 Medicaid provider agreements.--The agency may make
 1737 payments for medical assistance and related services rendered to
 1738 Medicaid recipients only to an individual or entity who has a
 1739 provider agreement in effect with the agency, who is performing
 1740 services or supplying goods in accordance with federal, state,
 1741 and local law, and who agrees that no person shall, on the
 1742 grounds of handicap, race, color, or national origin, or for any
 1743 other reason, be subjected to discrimination under any program
 1744 or activity for which the provider receives payment from the
 1745 agency.

1746 (8)

1747 (d) Proof of compliance with the requirements of level 2
 1748 screening under s. 435.04 conducted within 12 months prior to
 1749 the date that the Medicaid provider application is submitted to
 1750 the agency shall fulfill the requirements of this subsection.
 1751 Proof of compliance with the requirements of level 1 screening
 1752 under s. 435.03 conducted within 12 months prior to the date
 1753 that the Medicaid provider application is submitted to the
 1754 agency shall meet the requirement that the Department of Law
 1755 Enforcement conduct a state criminal history record check.

1756 Section 21. For the purpose of incorporating the
 1757 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1758 references thereto, subsections (1) and (3) of section 435.05,
 1759 Florida Statutes, are reenacted to read:

1760 435.05 Requirements for covered employees.--Except as
 1761 otherwise provided by law, the following requirements shall
 1762 apply to covered employees:

1763 (1)(a) Every person employed in a position for which
 1764 employment screening is required must, within 5 working days
 1765 after starting to work, submit to the employer a complete set of
 1766 information necessary to conduct a screening under this section.

1767 (b) For level 1 screening, the employer must submit the
 1768 information necessary for screening to the Florida Department of
 1769 Law Enforcement within 5 working days after receiving it. The
 1770 Florida Department of Law Enforcement will conduct a search of
 1771 its records and will respond to the employer agency. The
 1772 employer will inform the employee whether screening has revealed
 1773 any disqualifying information.

1774 (c) For level 2 screening, the employer or licensing
1775 agency must submit the information necessary for screening to
1776 the Florida Department of Law Enforcement within 5 working days
1777 after receiving it. The Florida Department of Law Enforcement
1778 will conduct a search of its criminal and juvenile records and
1779 will request that the Federal Bureau of Investigation conduct a
1780 search of its records for each employee for whom the request is
1781 made. The Florida Department of Law Enforcement will respond to
1782 the employer or licensing agency, and the employer or licensing
1783 agency will inform the employee whether screening has revealed
1784 disqualifying information.

1785 (d) The person whose background is being checked must
1786 supply any missing criminal or other necessary information to
1787 the employer within 30 days after the employer makes a request
1788 for the information or be subject to automatic disqualification.

1789 (3) Each employer required to conduct level 2 background
1790 screening must sign an affidavit annually, under penalty of
1791 perjury, stating that all covered employees have been screened
1792 or are newly hired and are awaiting the results of the required
1793 screening checks.

1794 Section 22. For the purpose of incorporating the
1795 amendments to sections 435.03 and 435.04, Florida Statutes, in
1796 references thereto, section 744.3135, Florida Statutes, as
1797 amended by chapter 2003-402, Laws of Florida, is reenacted to
1798 read:

1799 744.3135 Credit and criminal investigation.—The court may
1800 require a nonprofessional guardian and shall require a
1801 professional or public guardian, and all employees of a

1802 professional guardian who have a fiduciary responsibility to a
1803 ward, to submit, at their own expense, to an investigation of
1804 the guardian's credit history and to undergo level 2 background
1805 screening as required under s. 435.04. The clerk of the court
1806 shall obtain fingerprint cards from the Federal Bureau of
1807 Investigation and make them available to guardians. Any guardian
1808 who is so required shall have his or her fingerprints taken and
1809 forward the proper fingerprint card along with the necessary fee
1810 to the Florida Department of Law Enforcement for processing. The
1811 professional guardian shall pay to the clerk of the court a fee
1812 of up to \$7.50 for handling and processing professional guardian
1813 files. The results of the fingerprint checks shall be forwarded
1814 to the clerk of court who shall maintain the results in a
1815 guardian file and shall make the results available to the court.
1816 If credit or criminal investigations are required, the court
1817 must consider the results of the investigations in appointing a
1818 guardian. Professional guardians and all employees of a
1819 professional guardian who have a fiduciary responsibility to a
1820 ward, so appointed, must resubmit, at their own expense, to an
1821 investigation of credit history, and undergo level 1 background
1822 screening as required under s. 435.03, at least every 2 years
1823 after the date of their appointment. At any time, the court may
1824 require guardians or their employees to submit to an
1825 investigation of credit history and undergo level 1 background
1826 screening as required under s. 435.03. The court must consider
1827 the results of these investigations in reappointing a guardian.
1828 This section shall not apply to a professional guardian, or to
1829 the employees of a professional guardian, that is a trust

1830 company, a state banking corporation or state savings
 1831 association authorized and qualified to exercise fiduciary
 1832 powers in this state, or a national banking association or
 1833 federal savings and loan association authorized and qualified to
 1834 exercise fiduciary powers in this state.

1835 Section 23. For the purpose of incorporating the
 1836 amendments to sections 435.03 and 435.04, Florida Statutes, in
 1837 references thereto, subsection (2) of section 985.04, Florida
 1838 Statutes, is reenacted to read:

1839 985.04 Oaths; records; confidential information.--

1840 (2) Records maintained by the Department of Juvenile
 1841 Justice, including copies of records maintained by the court,
 1842 which pertain to a child found to have committed a delinquent
 1843 act which, if committed by an adult, would be a crime specified
 1844 in ss. 435.03 and 435.04 may not be destroyed pursuant to this
 1845 section for a period of 25 years after the youth's final
 1846 referral to the department, except in cases of the death of the
 1847 child. Such records, however, shall be sealed by the court for
 1848 use only in meeting the screening requirements for personnel in
 1849 s. 402.3055 and the other sections cited above, or pursuant to
 1850 departmental rule; however, current criminal history information
 1851 must be obtained from the Department of Law Enforcement in
 1852 accordance with s. 943.053. The information shall be released to
 1853 those persons specified in the above cited sections for the
 1854 purposes of complying with those sections. The court may punish
 1855 by contempt any person who releases or uses the records for any
 1856 unauthorized purpose.

1857 Section 24. For the purpose of incorporating the amendment
 1858 to section 435.03, Florida Statutes, in references thereto,
 1859 section 400.512, Florida Statutes, is reenacted to read:

1860 400.512 Screening of home health agency personnel; nurse
 1861 registry personnel; and companions and homemakers.--The agency
 1862 shall require employment or contractor screening as provided in
 1863 chapter 435, using the level 1 standards for screening set forth
 1864 in that chapter, for home health agency personnel; persons
 1865 referred for employment by nurse registries; and persons
 1866 employed by companion or homemaker services registered under s.
 1867 400.509.

1868 (1)(a) The Agency for Health Care Administration may, upon
 1869 request, grant exemptions from disqualification from employment
 1870 or contracting under this section as provided in s. 435.07,
 1871 except for health care practitioners licensed by the Department
 1872 of Health or a regulatory board within that department.

1873 (b) The appropriate regulatory board within the Department
 1874 of Health, or that department itself when there is no board,
 1875 may, upon request of the licensed health care practitioner,
 1876 grant exemptions from disqualification from employment or
 1877 contracting under this section as provided in s. 435.07.

1878 (2) The administrator of each home health agency, the
 1879 managing employee of each nurse registry, and the managing
 1880 employee of each companion or homemaker service registered under
 1881 s. 400.509 must sign an affidavit annually, under penalty of
 1882 perjury, stating that all personnel hired, contracted with, or
 1883 registered on or after October 1, 1994, who enter the home of a
 1884 patient or client in their service capacity have been screened

1885 and that its remaining personnel have worked for the home health
1886 agency or registrant continuously since before October 1, 1994.

1887 (3) As a prerequisite to operating as a home health
1888 agency, nurse registry, or companion or homemaker service under
1889 s. 400.509, the administrator or managing employee,
1890 respectively, must submit to the agency his or her name and any
1891 other information necessary to conduct a complete screening
1892 according to this section. The agency shall submit the
1893 information to the Department of Law Enforcement for state
1894 processing. The agency shall review the record of the
1895 administrator or manager with respect to the offenses specified
1896 in this section and shall notify the owner of its findings. If
1897 disposition information is missing on a criminal record, the
1898 administrator or manager, upon request of the agency, must
1899 obtain and supply within 30 days the missing disposition
1900 information to the agency. Failure to supply missing information
1901 within 30 days or to show reasonable efforts to obtain such
1902 information will result in automatic disqualification.

1903 (4) Proof of compliance with the screening requirements of
1904 chapter 435 shall be accepted in lieu of the requirements of
1905 this section if the person has been continuously employed or
1906 registered without a breach in service that exceeds 180 days,
1907 the proof of compliance is not more than 2 years old, and the
1908 person has been screened by the Department of Law Enforcement. A
1909 home health agency, nurse registry, or companion or homemaker
1910 service registered under s. 400.509 shall directly provide proof
1911 of compliance to another home health agency, nurse registry, or
1912 companion or homemaker service registered under s. 400.509. The

1913 recipient home health agency, nurse registry, or companion or
 1914 homemaker service registered under s. 400.509 may not accept any
 1915 proof of compliance directly from the person who requires
 1916 screening. Proof of compliance with the screening requirements
 1917 of this section shall be provided upon request to the person
 1918 screened by the home health agencies; nurse registries; or
 1919 companion or homemaker services registered under s. 400.509.

1920 (5) There is no monetary liability on the part of, and no
 1921 cause of action for damages arises against, a licensed home
 1922 health agency, licensed nurse registry, or companion or
 1923 homemaker service registered under s. 400.509, that, upon notice
 1924 that the employee or contractor has been found guilty of,
 1925 regardless of adjudication, or entered a plea of nolo contendere
 1926 or guilty to, any offense prohibited under s. 435.03 or under
 1927 any similar statute of another jurisdiction, terminates the
 1928 employee or contractor, whether or not the employee or
 1929 contractor has filed for an exemption with the agency in
 1930 accordance with chapter 435 and whether or not the time for
 1931 filing has expired.

1932 (6) The costs of processing the statewide correspondence
 1933 criminal records checks must be borne by the home health agency;
 1934 the nurse registry; or the companion or homemaker service
 1935 registered under s. 400.509, or by the person being screened, at
 1936 the discretion of the home health agency, nurse registry, or s.
 1937 400.509 registrant.

1938 (7)(a) It is a misdemeanor of the first degree, punishable
 1939 under s. 775.082 or s. 775.083, for any person willfully,
 1940 knowingly, or intentionally to:

1941 1. Fail, by false statement, misrepresentation,
 1942 impersonation, or other fraudulent means, to disclose in any
 1943 application for voluntary or paid employment a material fact
 1944 used in making a determination as to such person's
 1945 qualifications to be an employee under this section;

1946 2. Operate or attempt to operate an entity licensed or
 1947 registered under this part with persons who do not meet the
 1948 minimum standards for good moral character as contained in this
 1949 section; or

1950 3. Use information from the criminal records obtained
 1951 under this section for any purpose other than screening that
 1952 person for employment as specified in this section or release
 1953 such information to any other person for any purpose other than
 1954 screening for employment under this section.

1955 (b) It is a felony of the third degree, punishable under
 1956 s. 775.082, s. 775.083, or s. 775.084, for any person willfully,
 1957 knowingly, or intentionally to use information from the juvenile
 1958 records of a person obtained under this section for any purpose
 1959 other than screening for employment under this section.

1960 Section 25. For the purpose of incorporating the amendment
 1961 to section 435.03, Florida Statutes, in references thereto,
 1962 subsection (4) of section 400.619, Florida Statutes, is
 1963 reenacted to read:

1964 400.619 Licensure application and renewal.--

1965 (4) Upon receipt of a completed license application or
 1966 license renewal, and the fee, the agency shall initiate a level
 1967 1 background screening as provided under chapter 435 on the
 1968 adult family-care home provider, the designated relief person,

1969 | all adult household members, and all staff members. The agency
 1970 | shall conduct an onsite visit to the home that is to be
 1971 | licensed.

1972 | (a) Proof of compliance with level 1 screening standards
 1973 | which has been submitted within the previous 5 years to meet any
 1974 | facility or professional licensure requirements of the agency or
 1975 | the Department of Health satisfies the requirements of this
 1976 | subsection. Such proof must be accompanied, under penalty of
 1977 | perjury, by a copy of the person's current professional license
 1978 | and an affidavit of current compliance with the background
 1979 | screening requirements.

1980 | (b) The person required to be screened must have been
 1981 | continuously employed in the same type of occupation for which
 1982 | the person is seeking employment without a breach in service
 1983 | that exceeds 180 days, and proof of compliance with the level 1
 1984 | screening requirement which is no more than 2 years old must be
 1985 | provided. Proof of compliance shall be provided directly from
 1986 | one employer or contractor to another, and not from the person
 1987 | screened. Upon request, a copy of screening results shall be
 1988 | provided to the person screened by the employer retaining
 1989 | documentation of the screening.

1990 | Section 26. For the purpose of incorporating the amendment
 1991 | to section 435.03, Florida Statutes, in references thereto,
 1992 | subsection (1) of section 400.6194, Florida Statutes, is
 1993 | reenacted to read:

1994 | 400.6194 Denial, revocation, or suspension of a
 1995 | license.--The agency may deny, suspend, or revoke a license for
 1996 | any of the following reasons:

1997 (1) Failure of any of the persons required to undergo
 1998 background screening under s. 400.619 to meet the level 1
 1999 screening standards of s. 435.03, unless an exemption from
 2000 disqualification has been provided by the agency.

2001 Section 27. For the purpose of incorporating the amendment
 2002 to section 435.03, Florida Statutes, in references thereto,
 2003 section 400.953, Florida Statutes, is reenacted to read:

2004 400.953 Background screening of home medical equipment
 2005 provider personnel.--The agency shall require employment
 2006 screening as provided in chapter 435, using the level 1
 2007 standards for screening set forth in that chapter, for home
 2008 medical equipment provider personnel.

2009 (1) The agency may grant exemptions from disqualification
 2010 from employment under this section as provided in s. 435.07.

2011 (2) The general manager of each home medical equipment
 2012 provider must sign an affidavit annually, under penalty of
 2013 perjury, stating that all home medical equipment provider
 2014 personnel hired on or after July 1, 1999, who enter the home of
 2015 a patient in the capacity of their employment have been screened
 2016 and that its remaining personnel have worked for the home
 2017 medical equipment provider continuously since before July 1,
 2018 1999.

2019 (3) Proof of compliance with the screening requirements of
 2020 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
 2021 s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part
 2022 must be accepted in lieu of the requirements of this section if
 2023 the person has been continuously employed in the same type of
 2024 occupation for which he or she is seeking employment without a

2025 | breach in service that exceeds 180 days, the proof of compliance
2026 | is not more than 2 years old, and the person has been screened
2027 | by the Department of Law Enforcement. An employer or contractor
2028 | shall directly provide proof of compliance to another employer
2029 | or contractor, and a potential employer or contractor may not
2030 | accept any proof of compliance directly from the person
2031 | requiring screening. Proof of compliance with the screening
2032 | requirements of this section shall be provided, upon request, to
2033 | the person screened by the home medical equipment provider.

2034 | (4) There is no monetary liability on the part of, and no
2035 | cause of action for damages arising against, a licensed home
2036 | medical equipment provider that, upon notice that an employee
2037 | has been found guilty of, regardless of adjudication, or entered
2038 | a plea of nolo contendere or guilty to, any offense prohibited
2039 | under s. 435.03 or under any similar statute of another
2040 | jurisdiction, terminates the employee, whether or not the
2041 | employee has filed for an exemption with the agency and whether
2042 | or not the time for filing has expired.

2043 | (5) The costs of processing the statewide correspondence
2044 | criminal records checks must be borne by the home medical
2045 | equipment provider or by the person being screened, at the
2046 | discretion of the home medical equipment provider.

2047 | (6) Neither the agency nor the home medical equipment
2048 | provider may use the criminal records or juvenile records of a
2049 | person for any purpose other than determining whether that
2050 | person meets minimum standards of good moral character for home
2051 | medical equipment provider personnel.

2052 (7)(a) It is a misdemeanor of the first degree, punishable
 2053 as provided in s. 775.082 or s. 775.083, for any person
 2054 willfully, knowingly, or intentionally to:

2055 1. Fail, by false statement, misrepresentation,
 2056 impersonation, or other fraudulent means, to disclose in any
 2057 application for paid employment a material fact used in making a
 2058 determination as to the person's qualifications to be an
 2059 employee under this section;

2060 2. Operate or attempt to operate an entity licensed under
 2061 this part with persons who do not meet the minimum standards for
 2062 good moral character as contained in this section; or

2063 3. Use information from the criminal records obtained
 2064 under this section for any purpose other than screening that
 2065 person for employment as specified in this section, or release
 2066 such information to any other person for any purpose other than
 2067 screening for employment under this section.

2068 (b) It is a felony of the third degree, punishable as
 2069 provided in s. 775.082, s. 775.083, or s. 775.084, for any
 2070 person willfully, knowingly, or intentionally to use information
 2071 from the juvenile records of a person obtained under this
 2072 section for any purpose other than screening for employment
 2073 under this section.

2074 Section 28. For the purpose of incorporating the amendment
 2075 to section 435.03, Florida Statutes, in references thereto,
 2076 subsection (32) of section 409.912, Florida Statutes, is
 2077 reenacted to read:

2078 409.912 Cost-effective purchasing of health care.--The
 2079 agency shall purchase goods and services for Medicaid recipients

2080 in the most cost-effective manner consistent with the delivery
2081 of quality medical care. The agency shall maximize the use of
2082 prepaid per capita and prepaid aggregate fixed-sum basis
2083 services when appropriate and other alternative service delivery
2084 and reimbursement methodologies, including competitive bidding
2085 pursuant to s. 287.057, designed to facilitate the cost-
2086 effective purchase of a case-managed continuum of care. The
2087 agency shall also require providers to minimize the exposure of
2088 recipients to the need for acute inpatient, custodial, and other
2089 institutional care and the inappropriate or unnecessary use of
2090 high-cost services. The agency may establish prior authorization
2091 requirements for certain populations of Medicaid beneficiaries,
2092 certain drug classes, or particular drugs to prevent fraud,
2093 abuse, overuse, and possible dangerous drug interactions. The
2094 Pharmaceutical and Therapeutics Committee shall make
2095 recommendations to the agency on drugs for which prior
2096 authorization is required. The agency shall inform the
2097 Pharmaceutical and Therapeutics Committee of its decisions
2098 regarding drugs subject to prior authorization.

2099 (32) Each managed care plan that is under contract with
2100 the agency to provide health care services to Medicaid
2101 recipients shall annually conduct a background check with the
2102 Florida Department of Law Enforcement of all persons with
2103 ownership interest of 5 percent or more or executive management
2104 responsibility for the managed care plan and shall submit to the
2105 agency information concerning any such person who has been found
2106 guilty of, regardless of adjudication, or has entered a plea of

2107 nolo contendere or guilty to, any of the offenses listed in s.
 2108 435.03.

2109 Section 29. For the purpose of incorporating the amendment
 2110 to section 435.03, Florida Statutes, in references thereto,
 2111 subsection (4) of section 435.07, Florida Statutes, is reenacted
 2112 to read:

2113 435.07 Exemptions from disqualification.--Unless otherwise
 2114 provided by law, the provisions of this section shall apply to
 2115 exemptions from disqualification.

2116 (4) Disqualification from employment under subsection (1)
 2117 may not be removed from, nor may an exemption be granted to, any
 2118 personnel who is found guilty of, regardless of adjudication, or
 2119 who has entered a plea of nolo contendere or guilty to, any
 2120 felony covered by s. 435.03 solely by reason of any pardon,
 2121 executive clemency, or restoration of civil rights.

2122 Section 30. For the purpose of incorporating the amendment
 2123 to section 435.03, Florida Statutes, in references thereto,
 2124 paragraph (e) of subsection (1) of section 464.018, Florida
 2125 Statutes, is reenacted to read:

2126 464.018 Disciplinary actions.--

2127 (1) The following acts constitute grounds for denial of a
 2128 license or disciplinary action, as specified in s. 456.072(2):

2129 (e) Having been found guilty of, regardless of
 2130 adjudication, or entered a plea of nolo contendere or guilty to,
 2131 any offense prohibited under s. 435.03 or under any similar
 2132 statute of another jurisdiction; or having committed an act
 2133 which constitutes domestic violence as defined in s. 741.28.

2134 Section 31. For the purpose of incorporating the amendment
 2135 to section 435.03, Florida Statutes, in references thereto,
 2136 subsection (3) of section 744.309, Florida Statutes, is
 2137 reenacted to read:

2138 744.309 Who may be appointed guardian of a resident
 2139 ward.--

2140 (3) DISQUALIFIED PERSONS.--No person who has been
 2141 convicted of a felony or who, from any incapacity or illness, is
 2142 incapable of discharging the duties of a guardian, or who is
 2143 otherwise unsuitable to perform the duties of a guardian, shall
 2144 be appointed to act as guardian. Further, no person who has been
 2145 judicially determined to have committed abuse, abandonment, or
 2146 neglect against a child as defined in s. 39.01 or s. 984.03(1),
 2147 (2), and (37), or who has been found guilty of, regardless of
 2148 adjudication, or entered a plea of nolo contendere or guilty to,
 2149 any offense prohibited under s. 435.03 or under any similar
 2150 statute of another jurisdiction, shall be appointed to act as a
 2151 guardian. Except as provided in subsection (5) or subsection
 2152 (6), a person who provides substantial services to the proposed
 2153 ward in a professional or business capacity, or a creditor of
 2154 the proposed ward, may not be appointed guardian and retain that
 2155 previous professional or business relationship. A person may not
 2156 be appointed a guardian if he or she is in the employ of any
 2157 person, agency, government, or corporation that provides service
 2158 to the proposed ward in a professional or business capacity,
 2159 except that a person so employed may be appointed if he or she
 2160 is the spouse, adult child, parent, or sibling of the proposed
 2161 ward or the court determines that the potential conflict of

2162 interest is insubstantial and that the appointment would clearly
 2163 be in the proposed ward's best interest. The court may not
 2164 appoint a guardian in any other circumstance in which a conflict
 2165 of interest may occur.

2166 Section 32. For the purpose of incorporating the amendment
 2167 to section 435.03, Florida Statutes, in references thereto,
 2168 subsection (12) of section 744.474, Florida Statutes, is
 2169 reenacted to read:

2170 744.474 Reasons for removal of guardian.--A guardian may
 2171 be removed for any of the following reasons, and the removal
 2172 shall be in addition to any other penalties prescribed by law:

2173 (12) Having been found guilty of, regardless of
 2174 adjudication, or entered a plea of nolo contendere or guilty to,
 2175 any offense prohibited under s. 435.03 or under any similar
 2176 statute of another jurisdiction.

2177 Section 33. For the purpose of incorporating the amendment
 2178 to section 435.03, Florida Statutes, in references thereto,
 2179 subsection (4) of section 985.407, Florida Statutes, is
 2180 reenacted to read:

2181 985.407 Departmental contracting powers; personnel
 2182 standards and screening.--

2183 (4) The department shall require employment screening
 2184 pursuant to chapter 435, using the level 1 standards for
 2185 screening set forth in that chapter, for personnel in
 2186 delinquency facilities, services, and programs.

2187 Section 34. For the purpose of incorporating the amendment
 2188 to section 435.04, Florida Statutes, in references thereto,

2189 paragraph (b) of subsection (2) of section 39.001, Florida
 2190 Statutes, is reenacted to read:

2191 39.001 Purposes and intent; personnel standards and
 2192 screening.--

2193 (2) DEPARTMENT CONTRACTS.--The department may contract
 2194 with the Federal Government, other state departments and
 2195 agencies, county and municipal governments and agencies, public
 2196 and private agencies, and private individuals and corporations
 2197 in carrying out the purposes of, and the responsibilities
 2198 established in, this chapter.

2199 (b) The department shall require employment screening, and
 2200 rescreening no less frequently than once every 5 years, pursuant
 2201 to chapter 435, using the level 2 standards set forth in that
 2202 chapter for personnel in programs for children or youths.

2203 Section 35. For the purpose of incorporating the amendment
 2204 to section 435.04, Florida Statutes, in references thereto,
 2205 subsection (1) of section 39.821, Florida Statutes, is reenacted
 2206 to read:

2207 39.821 Qualifications of guardians ad litem.--

2208 (1) Because of the special trust or responsibility placed
 2209 in a guardian ad litem, the Guardian Ad Litem Program may use
 2210 any private funds collected by the program, or any state funds
 2211 so designated, to conduct a security background investigation
 2212 before certifying a volunteer to serve. A security background
 2213 investigation must include, but need not be limited to,
 2214 employment history checks, checks of references, local criminal
 2215 records checks through local law enforcement agencies, and
 2216 statewide criminal records checks through the Department of Law

2217 Enforcement. Upon request, an employer shall furnish a copy of
2218 the personnel record for the employee or former employee who is
2219 the subject of a security background investigation conducted
2220 under this section. The information contained in the personnel
2221 record may include, but need not be limited to, disciplinary
2222 matters and the reason why the employee was terminated from
2223 employment. An employer who releases a personnel record for
2224 purposes of a security background investigation is presumed to
2225 have acted in good faith and is not liable for information
2226 contained in the record without a showing that the employer
2227 maliciously falsified the record. A security background
2228 investigation conducted under this section must ensure that a
2229 person is not certified as a guardian ad litem if the person has
2230 been convicted of, regardless of adjudication, or entered a plea
2231 of nolo contendere or guilty to, any offense prohibited under
2232 the provisions of the Florida Statutes specified in s. 435.04(2)
2233 or under any similar law in another jurisdiction. Before
2234 certifying an applicant to serve as a guardian ad litem, the
2235 chief judge of the circuit court may request a federal criminal
2236 records check of the applicant through the Federal Bureau of
2237 Investigation. In analyzing and evaluating the information
2238 obtained in the security background investigation, the program
2239 must give particular emphasis to past activities involving
2240 children, including, but not limited to, child-related criminal
2241 offenses or child abuse. The program has the sole discretion in
2242 determining whether to certify a person based on his or her
2243 security background investigation. The information collected

2244 | pursuant to the security background investigation is
 2245 | confidential and exempt from s. 119.07(1).

2246 | Section 36. For the purpose of incorporating the amendment
 2247 | to section 435.04, Florida Statutes, in references thereto,
 2248 | paragraphs (a) and (c) of subsection (3) of section 110.1127,
 2249 | Florida Statutes, are reenacted to read:

2250 | 110.1127 Employee security checks.--

2251 | (3)(a) All positions in programs providing care to
 2252 | children, the developmentally disabled, or vulnerable adults for
 2253 | 15 hours or more per week; all permanent and temporary employee
 2254 | positions of the central abuse hotline; and all persons working
 2255 | under contract who have access to abuse records are deemed to be
 2256 | persons and positions of special trust or responsibility, and
 2257 | require employment screening pursuant to chapter 435, using the
 2258 | level 2 standards set forth in that chapter.

2259 | (c) All persons and employees in such positions of trust
 2260 | or responsibility shall be required to undergo security
 2261 | background investigations as a condition of employment and
 2262 | continued employment. For the purposes of this subsection,
 2263 | security background investigations shall be conducted as
 2264 | provided in chapter 435, using the level 2 standards for
 2265 | screening set forth in that chapter.

2266 | Section 37. For the purpose of incorporating the amendment
 2267 | to section 435.04, Florida Statutes, in references thereto,
 2268 | paragraph (a) of subsection (12) of section 112.0455, Florida
 2269 | Statutes, is reenacted to read:

2270 | 112.0455 Drug-Free Workplace Act.--

2271 | (12) DRUG-TESTING STANDARDS; LABORATORIES.--

2272 (a) A laboratory may analyze initial or confirmation drug
2273 specimens only if:

2274 1. The laboratory is licensed and approved by the Agency
2275 for Health Care Administration using criteria established by the
2276 United States Department of Health and Human Services as general
2277 guidelines for modeling the state drug testing program. Each
2278 applicant for licensure must comply with the following
2279 requirements:

2280 a. Upon receipt of a completed, signed, and dated
2281 application, the agency shall require background screening, in
2282 accordance with the level 2 standards for screening set forth in
2283 chapter 435, of the managing employee, or other similarly titled
2284 individual responsible for the daily operation of the
2285 laboratory, and of the financial officer, or other similarly
2286 titled individual who is responsible for the financial operation
2287 of the laboratory, including billings for services. The
2288 applicant must comply with the procedures for level 2 background
2289 screening as set forth in chapter 435, as well as the
2290 requirements of s. 435.03(3).

2291 b. The agency may require background screening of any
2292 other individual who is an applicant if the agency has probable
2293 cause to believe that he or she has been convicted of an offense
2294 prohibited under the level 2 standards for screening set forth
2295 in chapter 435.

2296 c. Proof of compliance with the level 2 background
2297 screening requirements of chapter 435 which has been submitted
2298 within the previous 5 years in compliance with any other health

2299 care licensure requirements of this state is acceptable in
2300 fulfillment of screening requirements.

2301 d. A provisional license may be granted to an applicant
2302 when each individual required by this section to undergo
2303 background screening has met the standards for the Department of
2304 Law Enforcement background check, but the agency has not yet
2305 received background screening results from the Federal Bureau of
2306 Investigation, or a request for a disqualification exemption has
2307 been submitted to the agency as set forth in chapter 435, but a
2308 response has not yet been issued. A license may be granted to
2309 the applicant upon the agency's receipt of a report of the
2310 results of the Federal Bureau of Investigation background
2311 screening for each individual required by this section to
2312 undergo background screening which confirms that all standards
2313 have been met, or upon the granting of a disqualification
2314 exemption by the agency as set forth in chapter 435. Any other
2315 person who is required to undergo level 2 background screening
2316 may serve in his or her capacity pending the agency's receipt of
2317 the report from the Federal Bureau of Investigation. However,
2318 the person may not continue to serve if the report indicates any
2319 violation of background screening standards and a
2320 disqualification exemption has not been requested of and granted
2321 by the agency as set forth in chapter 435.

2322 e. Each applicant must submit to the agency, with its
2323 application, a description and explanation of any exclusions,
2324 permanent suspensions, or terminations of the applicant from the
2325 Medicare or Medicaid programs. Proof of compliance with the
2326 requirements for disclosure of ownership and control interests

2327 | under the Medicaid or Medicare programs shall be accepted in
2328 | lieu of this submission.

2329 | f. Each applicant must submit to the agency a description
2330 | and explanation of any conviction of an offense prohibited under
2331 | the level 2 standards of chapter 435 by a member of the board of
2332 | directors of the applicant, its officers, or any individual
2333 | owning 5 percent or more of the applicant. This requirement does
2334 | not apply to a director of a not-for-profit corporation or
2335 | organization if the director serves solely in a voluntary
2336 | capacity for the corporation or organization, does not regularly
2337 | take part in the day-to-day operational decisions of the
2338 | corporation or organization, receives no remuneration for his or
2339 | her services on the corporation or organization's board of
2340 | directors, and has no financial interest and has no family
2341 | members with a financial interest in the corporation or
2342 | organization, provided that the director and the not-for-profit
2343 | corporation or organization include in the application a
2344 | statement affirming that the director's relationship to the
2345 | corporation satisfies the requirements of this sub-subparagraph.

2346 | g. A license may not be granted to any applicant if the
2347 | applicant or managing employee has been found guilty of,
2348 | regardless of adjudication, or has entered a plea of nolo
2349 | contendere or guilty to, any offense prohibited under the level
2350 | 2 standards for screening set forth in chapter 435, unless an
2351 | exemption from disqualification has been granted by the agency
2352 | as set forth in chapter 435.

2353 | h. The agency may deny or revoke licensure if the
2354 | applicant:

2355 (I) Has falsely represented a material fact in the
 2356 application required by sub-subparagraph e. or sub-subparagraph
 2357 f., or has omitted any material fact from the application
 2358 required by sub-subparagraph e. or sub-subparagraph f.; or

2359 (II) Has had prior action taken against the applicant
 2360 under the Medicaid or Medicare program as set forth in sub-
 2361 subparagraph e.

2362 i. An application for license renewal must contain the
 2363 information required under sub-subparagraphs e. and f.

2364 2. The laboratory has written procedures to ensure chain
 2365 of custody.

2366 3. The laboratory follows proper quality control
 2367 procedures, including, but not limited to:

2368 a. The use of internal quality controls including the use
 2369 of samples of known concentrations which are used to check the
 2370 performance and calibration of testing equipment, and periodic
 2371 use of blind samples for overall accuracy.

2372 b. An internal review and certification process for drug
 2373 test results, conducted by a person qualified to perform that
 2374 function in the testing laboratory.

2375 c. Security measures implemented by the testing laboratory
 2376 to preclude adulteration of specimens and drug test results.

2377 d. Other necessary and proper actions taken to ensure
 2378 reliable and accurate drug test results.

2379 Section 38. For the purpose of incorporating the amendment
 2380 to section 435.04, Florida Statutes, in references thereto,
 2381 subsections (1), (2), and (4) of section 381.0059, Florida
 2382 Statutes, are reenacted to read:

2383 381.0059 Background screening requirements for school
2384 health services personnel.--

2385 (1) Pursuant to the provisions of chapter 435, any person
2386 who provides services under a school health services plan
2387 pursuant to s. 381.0056 must meet level 2 screening requirements
2388 as described in s. 435.04. A person may satisfy the requirements
2389 of this subsection by submitting proof of compliance with the
2390 requirements of level 2 screening conducted within 12 months
2391 before the date that person initially provides services under a
2392 school health services plan.

2393 (2) A person may provide services under a school health
2394 services plan pursuant to s. 381.0056 prior to the completion of
2395 level 2 screening. However, pending the results of the
2396 screening, such person may not be alone with a minor.

2397 (4) Under penalty of perjury, each person who provides
2398 services under a school health plan pursuant to s. 381.0056 must
2399 attest to meeting the level 2 screening requirements for
2400 participation under the plan and agree to inform his or her
2401 employer immediately if convicted of any disqualifying offense
2402 while providing services under a plan.

2403 Section 39. For the purpose of incorporating the amendment
2404 to section 435.04, Florida Statutes, in references thereto,
2405 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (1) of
2406 section 381.60225, Florida Statutes, are reenacted to read:

2407 381.60225 Background screening.--

2408 (1) Each applicant for certification must comply with the
2409 following requirements:

2410 (a) Upon receipt of a completed, signed, and dated
2411 application, the Agency for Health Care Administration shall
2412 require background screening, in accordance with the level 2
2413 standards for screening set forth in chapter 435, of the
2414 managing employee, or other similarly titled individual
2415 responsible for the daily operation of the organization, agency,
2416 or entity, and financial officer, or other similarly titled
2417 individual who is responsible for the financial operation of the
2418 organization, agency, or entity, including billings for
2419 services. The applicant must comply with the procedures for
2420 level 2 background screening as set forth in chapter 435, as
2421 well as the requirements of s. 435.03(3).

2422 (b) The Agency for Health Care Administration may require
2423 background screening of any other individual who is an applicant
2424 if the Agency for Health Care Administration has probable cause
2425 to believe that he or she has been convicted of a crime or has
2426 committed any other offense prohibited under the level 2
2427 standards for screening set forth in chapter 435.

2428 (c) Proof of compliance with the level 2 background
2429 screening requirements of chapter 435 which has been submitted
2430 within the previous 5 years in compliance with any other health
2431 care licensure requirements of this state is acceptable in
2432 fulfillment of the requirements of paragraph (a).

2433 (d) A provisional certification may be granted to the
2434 organization, agency, or entity when each individual required by
2435 this section to undergo background screening has met the
2436 standards for the Department of Law Enforcement background
2437 check, but the agency has not yet received background screening

2438 results from the Federal Bureau of Investigation, or a request
2439 for a disqualification exemption has been submitted to the
2440 agency as set forth in chapter 435, but a response has not yet
2441 been issued. A standard certification may be granted to the
2442 organization, agency, or entity upon the agency's receipt of a
2443 report of the results of the Federal Bureau of Investigation
2444 background screening for each individual required by this
2445 section to undergo background screening which confirms that all
2446 standards have been met, or upon the granting of a
2447 disqualification exemption by the agency as set forth in chapter
2448 435. Any other person who is required to undergo level 2
2449 background screening may serve in his or her capacity pending
2450 the agency's receipt of the report from the Federal Bureau of
2451 Investigation. However, the person may not continue to serve if
2452 the report indicates any violation of background screening
2453 standards and a disqualification exemption has not been
2454 requested of and granted by the agency as set forth in chapter
2455 435.

2456 (f) Each applicant must submit to the agency a description
2457 and explanation of any conviction of an offense prohibited under
2458 the level 2 standards of chapter 435 by a member of the board of
2459 directors of the applicant, its officers, or any individual
2460 owning 5 percent or more of the applicant. This requirement does
2461 not apply to a director of a not-for-profit corporation or
2462 organization if the director serves solely in a voluntary
2463 capacity for the corporation or organization, does not regularly
2464 take part in the day-to-day operational decisions of the
2465 corporation or organization, receives no remuneration for his or

2466 her services on the corporation or organization's board of
 2467 directors, and has no financial interest and has no family
 2468 members with a financial interest in the corporation or
 2469 organization, provided that the director and the not-for-profit
 2470 corporation or organization include in the application a
 2471 statement affirming that the director's relationship to the
 2472 corporation satisfies the requirements of this paragraph.

2473 (g) The agency may not certify any organization, agency,
 2474 or entity if any applicant or managing employee has been found
 2475 guilty of, regardless of adjudication, or has entered a plea of
 2476 nolo contendere or guilty to, any offense prohibited under the
 2477 level 2 standards for screening set forth in chapter 435, unless
 2478 an exemption from disqualification has been granted by the
 2479 agency as set forth in chapter 435.

2480 Section 40. For the purpose of incorporating the amendment
 2481 to section 435.04, Florida Statutes, in references thereto,
 2482 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (7) of
 2483 section 383.305, Florida Statutes, are reenacted to read:

2484 383.305 Licensure; issuance, renewal, denial, suspension,
 2485 revocation; fees; background screening.--

2486 (7) Each applicant for licensure must comply with the
 2487 following requirements:

2488 (a) Upon receipt of a completed, signed, and dated
 2489 application, the agency shall require background screening, in
 2490 accordance with the level 2 standards for screening set forth in
 2491 chapter 435, of the managing employee, or other similarly titled
 2492 individual who is responsible for the daily operation of the
 2493 center, and of the financial officer, or other similarly titled

2494 individual who is responsible for the financial operation of the
2495 center, including billings for patient care and services. The
2496 applicant must comply with the procedures for level 2 background
2497 screening as set forth in chapter 435 as well as the
2498 requirements of s. 435.03(3).

2499 (b) The agency may require background screening of any
2500 other individual who is an applicant if the agency has probable
2501 cause to believe that he or she has been convicted of a crime or
2502 has committed any other offense prohibited under the level 2
2503 standards for screening set forth in chapter 435.

2504 (c) Proof of compliance with the level 2 background
2505 screening requirements of chapter 435 which has been submitted
2506 within the previous 5 years in compliance with any other health
2507 care licensure requirements of this state is acceptable in
2508 fulfillment of the requirements of paragraph (a).

2509 (d) A provisional license may be granted to an applicant
2510 when each individual required by this section to undergo
2511 background screening has met the standards for the Department of
2512 Law Enforcement background check, but the agency has not yet
2513 received background screening results from the Federal Bureau of
2514 Investigation, or a request for a disqualification exemption has
2515 been submitted to the agency as set forth in chapter 435 but a
2516 response has not yet been issued. A standard license may be
2517 granted to the applicant upon the agency's receipt of a report
2518 of the results of the Federal Bureau of Investigation background
2519 screening for each individual required by this section to
2520 undergo background screening which confirms that all standards
2521 have been met, or upon the granting of a disqualification

2522 exemption by the agency as set forth in chapter 435. Any other
2523 person who is required to undergo level 2 background screening
2524 may serve in his or her capacity pending the agency's receipt of
2525 the report from the Federal Bureau of Investigation. However,
2526 the person may not continue to serve if the report indicates any
2527 violation of background screening standards and a
2528 disqualification exemption has not been requested of and granted
2529 by the agency as set forth in chapter 435.

2530 (f) Each applicant must submit to the agency a description
2531 and explanation of any conviction of an offense prohibited under
2532 the level 2 standards of chapter 435 by a member of the board of
2533 directors of the applicant, its officers, or any individual
2534 owning 5 percent or more of the applicant. This requirement does
2535 not apply to a director of a not-for-profit corporation or
2536 organization if the director serves solely in a voluntary
2537 capacity for the corporation or organization, does not regularly
2538 take part in the day-to-day operational decisions of the
2539 corporation or organization, receives no remuneration for his or
2540 her services on the corporation or organization's board of
2541 directors, and has no financial interest and has no family
2542 members with a financial interest in the corporation or
2543 organization, provided that the director and the not-for-profit
2544 corporation or organization include in the application a
2545 statement affirming that the director's relationship to the
2546 corporation satisfies the requirements of this paragraph.

2547 (g) A license may not be granted to an applicant if the
2548 applicant or managing employee has been found guilty of,
2549 regardless of adjudication, or has entered a plea of nolo

2550 | contendere or guilty to, any offense prohibited under the level
 2551 | 2 standards for screening set forth in chapter 435, unless an
 2552 | exemption from disqualification has been granted by the agency
 2553 | as set forth in chapter 435.

2554 | Section 41. For the purpose of incorporating the amendment
 2555 | to section 435.04, Florida Statutes, in references thereto,
 2556 | paragraphs (a), (b), (c), (d), (f), and (g) of subsection (3) of
 2557 | section 390.015, Florida Statutes, are reenacted to read:

2558 | 390.015 Application for license.--

2559 | (3) Each applicant for licensure must comply with the
 2560 | following requirements:

2561 | (a) Upon receipt of a completed, signed, and dated
 2562 | application, the agency shall require background screening, in
 2563 | accordance with the level 2 standards for screening set forth in
 2564 | chapter 435, of the managing employee, or other similarly titled
 2565 | individual who is responsible for the daily operation of the
 2566 | clinic, and financial officer, or other similarly titled
 2567 | individual who is responsible for the financial operation of the
 2568 | clinic, including billings for patient care and services. The
 2569 | applicant must comply with the procedures for level 2 background
 2570 | screening as set forth in chapter 435, as well as the
 2571 | requirements of s. 435.03(3).

2572 | (b) The agency may require background screening of any
 2573 | other individual who is an applicant if the agency has probable
 2574 | cause to believe that he or she has been convicted of a crime or
 2575 | has committed any other offense prohibited under the level 2
 2576 | standards for screening set forth in chapter 435.

2577 (c) Proof of compliance with the level 2 background
 2578 screening requirements of chapter 435 which has been submitted
 2579 within the previous 5 years in compliance with any other health
 2580 care licensure requirements of this state is acceptable in
 2581 fulfillment of the requirements of paragraph (a).

2582 (d) A provisional license may be granted to an applicant
 2583 when each individual required by this section to undergo
 2584 background screening has met the standards for the Department of
 2585 Law Enforcement background check, but the agency has not yet
 2586 received background screening results from the Federal Bureau of
 2587 Investigation, or a request for a disqualification exemption has
 2588 been submitted to the agency as set forth in chapter 435 but a
 2589 response has not yet been issued. A standard license may be
 2590 granted to the applicant upon the agency's receipt of a report
 2591 of the results of the Federal Bureau of Investigation background
 2592 screening for each individual required by this section to
 2593 undergo background screening which confirms that all standards
 2594 have been met, or upon the granting of a disqualification
 2595 exemption by the agency as set forth in chapter 435. Any other
 2596 person who is required to undergo level 2 background screening
 2597 may serve in his or her capacity pending the agency's receipt of
 2598 the report from the Federal Bureau of Investigation. However,
 2599 the person may not continue to serve if the report indicates any
 2600 violation of background screening standards and a
 2601 disqualification exemption has not been requested of and granted
 2602 by the agency as set forth in chapter 435.

2603 (f) Each applicant must submit to the agency a description
 2604 and explanation of any conviction of an offense prohibited under

2605 | the level 2 standards of chapter 435 by a member of the board of
2606 | directors of the applicant, its officers, or any individual
2607 | owning 5 percent or more of the applicant. This requirement does
2608 | not apply to a director of a not-for-profit corporation or
2609 | organization if the director serves solely in a voluntary
2610 | capacity for the corporation or organization, does not regularly
2611 | take part in the day-to-day operational decisions of the
2612 | corporation or organization, receives no remuneration for his or
2613 | her services on the corporation or organization's board of
2614 | directors, and has no financial interest and has no family
2615 | members with a financial interest in the corporation or
2616 | organization, provided that the director and the not-for-profit
2617 | corporation or organization include in the application a
2618 | statement affirming that the director's relationship to the
2619 | corporation satisfies the requirements of this paragraph.

2620 | (g) A license may not be granted to an applicant if the
2621 | applicant or managing employee has been found guilty of,
2622 | regardless of adjudication, or has entered a plea of nolo
2623 | contendere or guilty to, any offense prohibited under the level
2624 | 2 standards for screening set forth in chapter 435, unless an
2625 | exemption from disqualification has been granted by the agency
2626 | as set forth in chapter 435.

2627 | Section 42. For the purpose of incorporating the amendment
2628 | to section 435.04, Florida Statutes, in references thereto,
2629 | paragraphs (a), (b), (c), (d), (f), and (g) of subsection (13)
2630 | of section 394.875, Florida Statutes, are reenacted to read:

2631 394.875 Crisis stabilization units, residential treatment
 2632 facilities, and residential treatment centers for children and
 2633 adolescents; authorized services; license required; penalties.--

2634 (13) Each applicant for licensure must comply with the
 2635 following requirements:

2636 (a) Upon receipt of a completed, signed, and dated
 2637 application, the agency shall require background screening, in
 2638 accordance with the level 2 standards for screening set forth in
 2639 chapter 435, of the managing employee and financial officer, or
 2640 other similarly titled individual who is responsible for the
 2641 financial operation of the facility, including billings for
 2642 client care and services. The applicant must comply with the
 2643 procedures for level 2 background screening as set forth in
 2644 chapter 435, as well as the requirements of s. 435.03(3).

2645 (b) The agency may require background screening of any
 2646 other individual who is an applicant if the agency has probable
 2647 cause to believe that he or she has been convicted of a crime or
 2648 has committed any other offense prohibited under the level 2
 2649 standards for screening set forth in chapter 435.

2650 (c) Proof of compliance with the level 2 background
 2651 screening requirements of chapter 435 which has been submitted
 2652 within the previous 5 years in compliance with any other health
 2653 care licensure requirements of this state is acceptable in
 2654 fulfillment of the requirements of paragraph (a).

2655 (d) A provisional license may be granted to an applicant
 2656 when each individual required by this section to undergo
 2657 background screening has met the standards for the Department of
 2658 Law Enforcement background check, but the agency has not yet

2659 received background screening results from the Federal Bureau of
2660 Investigation, or a request for a disqualification exemption has
2661 been submitted to the agency as set forth in chapter 435, but a
2662 response has not yet been issued. A standard license may be
2663 granted to the applicant upon the agency's receipt of a report
2664 of the results of the Federal Bureau of Investigation background
2665 screening for each individual required by this section to
2666 undergo background screening which confirms that all standards
2667 have been met, or upon the granting of a disqualification
2668 exemption by the agency as set forth in chapter 435. Any other
2669 person who is required to undergo level 2 background screening
2670 may serve in his or her capacity pending the agency's receipt of
2671 the report from the Federal Bureau of Investigation. However,
2672 the person may not continue to serve if the report indicates any
2673 violation of background screening standards and a
2674 disqualification exemption has not been requested of and granted
2675 by the agency as set forth in chapter 435.

2676 (f) Each applicant must submit to the agency a description
2677 and explanation of any conviction of an offense prohibited under
2678 the level 2 standards of chapter 435 by a member of the board of
2679 directors of the applicant, its officers, or any individual
2680 owning 5 percent or more of the applicant. This requirement does
2681 not apply to a director of a not-for-profit corporation or
2682 organization if the director serves solely in a voluntary
2683 capacity for the corporation or organization, does not regularly
2684 take part in the day-to-day operational decisions of the
2685 corporation or organization, receives no remuneration for his or
2686 her services on the corporation or organization's board of

2687 | directors, and has no financial interest and has no family
2688 | members with a financial interest in the corporation or
2689 | organization, provided that the director and the not-for-profit
2690 | corporation or organization include in the application a
2691 | statement affirming that the director's relationship to the
2692 | corporation satisfies the requirements of this paragraph.

2693 | (g) A license may not be granted to an applicant if the
2694 | applicant or managing employee has been found guilty of,
2695 | regardless of adjudication, or has entered a plea of nolo
2696 | contendere or guilty to, any offense prohibited under the level
2697 | 2 standards for screening set forth in chapter 435, unless an
2698 | exemption from disqualification has been granted by the agency
2699 | as set forth in chapter 435.

2700 | Section 43. For the purpose of incorporating the amendment
2701 | to section 435.04, Florida Statutes, in references thereto,
2702 | subsections (1), (2), (3), (4), (6), and (8) of section
2703 | 395.0055, Florida Statutes, are reenacted to read:

2704 | 395.0055 Background screening.--Each applicant for
2705 | licensure must comply with the following requirements:

2706 | (1) Upon receipt of a completed, signed, and dated
2707 | application, the agency shall require background screening of
2708 | the managing employee in accordance with the level 2 standards
2709 | for screening set forth in chapter 435, as well as the
2710 | requirements of s. 435.03(3).

2711 | (2) The agency may require background screening for a
2712 | member of the board of directors of the licensee, or an officer
2713 | or an individual owning 5 percent or more of the licensee, if
2714 | the agency has probable cause to believe that such individual

2715 | has been convicted of an offense prohibited under the level 2
2716 | standards for screening set forth in chapter 435.

2717 | (3) Proof of compliance with the level 2 background
2718 | screening requirements of chapter 435 which has been submitted
2719 | within the previous 5 years in compliance with any other health
2720 | care licensure requirements of this state is acceptable in
2721 | fulfillment of subsection (1).

2722 | (4) A provisional license may be granted to an applicant
2723 | when each individual required by this section to undergo
2724 | background screening has met the standards for the Department of
2725 | Law Enforcement background check, but the agency has not yet
2726 | received background screening results from the Federal Bureau of
2727 | Investigation, or a request for a disqualification exemption has
2728 | been submitted to the agency as set forth in chapter 435 but a
2729 | response has not yet been issued. A standard license may be
2730 | granted to the applicant upon the agency's receipt of a report
2731 | of the results of the Federal Bureau of Investigation background
2732 | screening for each individual required by this section to
2733 | undergo background screening which confirms that all standards
2734 | have been met, or upon the granting of a disqualification
2735 | exemption by the agency as set forth in chapter 435. Any other
2736 | person who is required to undergo level 2 background screening
2737 | may serve in his or her capacity pending the agency's receipt of
2738 | the report from the Federal Bureau of Investigation; however,
2739 | the person may not continue to serve if the report indicates any
2740 | violation of background screening standards and a
2741 | disqualification exemption has not been requested of and granted
2742 | by the agency as set forth in chapter 435.

2743 (6) Each applicant must submit to the agency a description
 2744 and explanation of any conviction of an offense prohibited under
 2745 the level 2 standards of chapter 435 by a member of the board of
 2746 directors of the applicant, its officers, or any individual
 2747 owning 5 percent or more of the applicant.

2748 (8) A license may not be granted to an applicant if the
 2749 applicant or managing employee has been found guilty of,
 2750 regardless of adjudication, or has entered a plea of nolo
 2751 contendere or guilty to, any offense prohibited under the level
 2752 2 standards for screening set forth in chapter 435, unless an
 2753 exemption from disqualification has been granted by the agency
 2754 as set forth in chapter 435.

2755 Section 44. For the purpose of incorporating the amendment
 2756 to section 435.04, Florida Statutes, in references thereto,
 2757 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of
 2758 section 395.0199, Florida Statutes, are reenacted to read:

2759 395.0199 Private utilization review.--

2760 (4) Each applicant for registration must comply with the
 2761 following requirements:

2762 (a) Upon receipt of a completed, signed, and dated
 2763 application, the agency shall require background screening, in
 2764 accordance with the level 2 standards for screening set forth in
 2765 chapter 435, of the managing employee or other similarly titled
 2766 individual who is responsible for the operation of the entity.
 2767 The applicant must comply with the procedures for level 2
 2768 background screening as set forth in chapter 435, as well as the
 2769 requirements of s. 435.03(3).

2770 (b) The agency may require background screening of any
2771 other individual who is an applicant, if the agency has probable
2772 cause to believe that he or she has been convicted of a crime or
2773 has committed any other offense prohibited under the level 2
2774 standards for screening set forth in chapter 435.

2775 (c) Proof of compliance with the level 2 background
2776 screening requirements of chapter 435 which has been submitted
2777 within the previous 5 years in compliance with any other health
2778 care licensure requirements of this state is acceptable in
2779 fulfillment of the requirements of paragraph (a).

2780 (d) A provisional registration may be granted to an
2781 applicant when each individual required by this section to
2782 undergo background screening has met the standards for the
2783 Department of Law Enforcement background check, but the agency
2784 has not yet received background screening results from the
2785 Federal Bureau of Investigation, or a request for a
2786 disqualification exemption has been submitted to the agency as
2787 set forth in chapter 435 but a response has not yet been issued.
2788 A standard registration may be granted to the applicant upon the
2789 agency's receipt of a report of the results of the Federal
2790 Bureau of Investigation background screening for each individual
2791 required by this section to undergo background screening which
2792 confirms that all standards have been met, or upon the granting
2793 of a disqualification exemption by the agency as set forth in
2794 chapter 435. Any other person who is required to undergo level 2
2795 background screening may serve in his or her capacity pending
2796 the agency's receipt of the report from the Federal Bureau of
2797 Investigation. However, the person may not continue to serve if

2798 | the report indicates any violation of background screening
2799 | standards and a disqualification exemption has not been
2800 | requested of and granted by the agency as set forth in chapter
2801 | 435.

2802 | (f) Each applicant must submit to the agency a description
2803 | and explanation of any conviction of an offense prohibited under
2804 | the level 2 standards of chapter 435 by a member of the board of
2805 | directors of the applicant, its officers, or any individual
2806 | owning 5 percent or more of the applicant. This requirement does
2807 | not apply to a director of a not-for-profit corporation or
2808 | organization if the director serves solely in a voluntary
2809 | capacity for the corporation or organization, does not regularly
2810 | take part in the day-to-day operational decisions of the
2811 | corporation or organization, receives no remuneration for his or
2812 | her services on the corporation or organization's board of
2813 | directors, and has no financial interest and has no family
2814 | members with a financial interest in the corporation or
2815 | organization, provided that the director and the not-for-profit
2816 | corporation or organization include in the application a
2817 | statement affirming that the director's relationship to the
2818 | corporation satisfies the requirements of this paragraph.

2819 | (g) A registration may not be granted to an applicant if
2820 | the applicant or managing employee has been found guilty of,
2821 | regardless of adjudication, or has entered a plea of nolo
2822 | contendere or guilty to, any offense prohibited under the level
2823 | 2 standards for screening set forth in chapter 435, unless an
2824 | exemption from disqualification has been granted by the agency
2825 | as set forth in chapter 435.

2826 Section 45. For the purpose of incorporating the amendment
 2827 to section 435.04, Florida Statutes, in references thereto,
 2828 paragraph (a) of subsection (1) of section 397.451, Florida
 2829 Statutes, is reenacted to read:

2830 397.451 Background checks of service provider personnel.--

2831 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
 2832 EXCEPTIONS.--

2833 (a) Background checks shall apply as follows:

2834 1. All owners, directors, and chief financial officers of
 2835 service providers are subject to level 2 background screening as
 2836 provided under chapter 435.

2837 2. All service provider personnel who have direct contact
 2838 with children receiving services or with adults who are
 2839 developmentally disabled receiving services are subject to level
 2840 2 background screening as provided under chapter 435.

2841 Section 46. For the purpose of incorporating the amendment
 2842 to section 435.04, Florida Statutes, in references thereto,
 2843 paragraphs (a), (b), (c), (d), and (f) of subsection (4) of
 2844 section 400.071, Florida Statutes, are reenacted to read:

2845 400.071 Application for license.--

2846 (4) Each applicant for licensure must comply with the
 2847 following requirements:

2848 (a) Upon receipt of a completed, signed, and dated
 2849 application, the agency shall require background screening of
 2850 the applicant, in accordance with the level 2 standards for
 2851 screening set forth in chapter 435. As used in this subsection,
 2852 the term "applicant" means the facility administrator, or
 2853 similarly titled individual who is responsible for the day-to-

2854 | day operation of the licensed facility, and the facility
2855 | financial officer, or similarly titled individual who is
2856 | responsible for the financial operation of the licensed
2857 | facility.

2858 | (b) The agency may require background screening for a
2859 | member of the board of directors of the licensee or an officer
2860 | or an individual owning 5 percent or more of the licensee if the
2861 | agency has probable cause to believe that such individual has
2862 | been convicted of an offense prohibited under the level 2
2863 | standards for screening set forth in chapter 435.

2864 | (c) Proof of compliance with the level 2 background
2865 | screening requirements of chapter 435 which has been submitted
2866 | within the previous 5 years in compliance with any other health
2867 | care or assisted living licensure requirements of this state is
2868 | acceptable in fulfillment of paragraph (a). Proof of compliance
2869 | with background screening which has been submitted within the
2870 | previous 5 years to fulfill the requirements of the Financial
2871 | Services Commission and the Office of Insurance Regulation
2872 | pursuant to chapter 651 as part of an application for a
2873 | certificate of authority to operate a continuing care retirement
2874 | community is acceptable in fulfillment of the Department of Law
2875 | Enforcement and Federal Bureau of Investigation background
2876 | check.

2877 | (d) A provisional license may be granted to an applicant
2878 | when each individual required by this section to undergo
2879 | background screening has met the standards for the Department of
2880 | Law Enforcement background check, but the agency has not yet
2881 | received background screening results from the Federal Bureau of

2882 Investigation, or a request for a disqualification exemption has
2883 been submitted to the agency as set forth in chapter 435, but a
2884 response has not yet been issued. A license may be granted to
2885 the applicant upon the agency's receipt of a report of the
2886 results of the Federal Bureau of Investigation background
2887 screening for each individual required by this section to
2888 undergo background screening which confirms that all standards
2889 have been met, or upon the granting of a disqualification
2890 exemption by the agency as set forth in chapter 435. Any other
2891 person who is required to undergo level 2 background screening
2892 may serve in his or her capacity pending the agency's receipt of
2893 the report from the Federal Bureau of Investigation; however,
2894 the person may not continue to serve if the report indicates any
2895 violation of background screening standards and a
2896 disqualification exemption has not been requested of and granted
2897 by the agency as set forth in chapter 435.

2898 (f) Each applicant must submit to the agency a description
2899 and explanation of any conviction of an offense prohibited under
2900 the level 2 standards of chapter 435 by a member of the board of
2901 directors of the applicant, its officers, or any individual
2902 owning 5 percent or more of the applicant. This requirement
2903 shall not apply to a director of a not-for-profit corporation or
2904 organization if the director serves solely in a voluntary
2905 capacity for the corporation or organization, does not regularly
2906 take part in the day-to-day operational decisions of the
2907 corporation or organization, receives no remuneration for his or
2908 her services on the corporation or organization's board of
2909 directors, and has no financial interest and has no family

2910 members with a financial interest in the corporation or
 2911 organization, provided that the director and the not-for-profit
 2912 corporation or organization include in the application a
 2913 statement affirming that the director's relationship to the
 2914 corporation satisfies the requirements of this paragraph.

2915 Section 47. For the purpose of incorporating the amendment
 2916 to section 435.04, Florida Statutes, in references thereto,
 2917 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of
 2918 section 400.471, Florida Statutes, are reenacted to read:

2919 400.471 Application for license; fee; provisional license;
 2920 temporary permit.--

2921 (4) Each applicant for licensure must comply with the
 2922 following requirements:

2923 (a) Upon receipt of a completed, signed, and dated
 2924 application, the agency shall require background screening of
 2925 the applicant, in accordance with the level 2 standards for
 2926 screening set forth in chapter 435. As used in this subsection,
 2927 the term "applicant" means the administrator, or a similarly
 2928 titled person who is responsible for the day-to-day operation of
 2929 the licensed home health agency, and the financial officer, or
 2930 similarly titled individual who is responsible for the financial
 2931 operation of the licensed home health agency.

2932 (b) The agency may require background screening for a
 2933 member of the board of directors of the licensee or an officer
 2934 or an individual owning 5 percent or more of the licensee if the
 2935 agency reasonably suspects that such individual has been
 2936 convicted of an offense prohibited under the level 2 standards
 2937 for screening set forth in chapter 435.

2938 (c) Proof of compliance with the level 2 background
 2939 screening requirements of chapter 435 which has been submitted
 2940 within the previous 5 years in compliance with any other health
 2941 care or assisted living licensure requirements of this state is
 2942 acceptable in fulfillment of paragraph (a). Proof of compliance
 2943 with background screening which has been submitted within the
 2944 previous 5 years to fulfill the requirements of the Financial
 2945 Services Commission and the Office of Insurance Regulation
 2946 pursuant to chapter 651 as part of an application for a
 2947 certificate of authority to operate a continuing care retirement
 2948 community is acceptable in fulfillment of the Department of Law
 2949 Enforcement and Federal Bureau of Investigation background
 2950 check.

2951 (d) A provisional license may be granted to an applicant
 2952 when each individual required by this section to undergo
 2953 background screening has met the standards for the Department of
 2954 Law Enforcement background check, but the agency has not yet
 2955 received background screening results from the Federal Bureau of
 2956 Investigation. A standard license may be granted to the licensee
 2957 upon the agency's receipt of a report of the results of the
 2958 Federal Bureau of Investigation background screening for each
 2959 individual required by this section to undergo background
 2960 screening which confirms that all standards have been met, or
 2961 upon the granting of a disqualification exemption by the agency
 2962 as set forth in chapter 435. Any other person who is required to
 2963 undergo level 2 background screening may serve in his or her
 2964 capacity pending the agency's receipt of the report from the
 2965 Federal Bureau of Investigation. However, the person may not

2966 | continue to serve if the report indicates any violation of
2967 | background screening standards and a disqualification exemption
2968 | has not been requested of and granted by the agency as set forth
2969 | in chapter 435.

2970 | (f) Each applicant must submit to the agency a description
2971 | and explanation of any conviction of an offense prohibited under
2972 | the level 2 standards of chapter 435 by a member of the board of
2973 | directors of the applicant, its officers, or any individual
2974 | owning 5 percent or more of the applicant. This requirement does
2975 | not apply to a director of a not-for-profit corporation or
2976 | organization if the director serves solely in a voluntary
2977 | capacity for the corporation or organization, does not regularly
2978 | take part in the day-to-day operational decisions of the
2979 | corporation or organization, receives no remuneration for his or
2980 | her services on the corporation or organization's board of
2981 | directors, and has no financial interest and has no family
2982 | members with a financial interest in the corporation or
2983 | organization, provided that the director and the not-for-profit
2984 | corporation or organization include in the application a
2985 | statement affirming that the director's relationship to the
2986 | corporation satisfies the requirements of this paragraph.

2987 | (g) A license may not be granted to an applicant if the
2988 | applicant, administrator, or financial officer has been found
2989 | guilty of, regardless of adjudication, or has entered a plea of
2990 | nolo contendere or guilty to, any offense prohibited under the
2991 | level 2 standards for screening set forth in chapter 435, unless
2992 | an exemption from disqualification has been granted by the
2993 | agency as set forth in chapter 435.

2994 Section 48. For the purpose of incorporating the amendment
 2995 to section 435.04, Florida Statutes, in references thereto,
 2996 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of
 2997 section 400.506, Florida Statutes, are reenacted to read:

2998 400.506 Licensure of nurse registries; requirements;
 2999 penalties.--

3000 (2) Each applicant for licensure must comply with the
 3001 following requirements:

3002 (a) Upon receipt of a completed, signed, and dated
 3003 application, the agency shall require background screening, in
 3004 accordance with the level 2 standards for screening set forth in
 3005 chapter 435, of the managing employee, or other similarly titled
 3006 individual who is responsible for the daily operation of the
 3007 nurse registry, and of the financial officer, or other similarly
 3008 titled individual who is responsible for the financial operation
 3009 of the registry, including billings for patient care and
 3010 services. The applicant shall comply with the procedures for
 3011 level 2 background screening as set forth in chapter 435.

3012 (b) The agency may require background screening of any
 3013 other individual who is an applicant if the agency has probable
 3014 cause to believe that he or she has been convicted of a crime or
 3015 has committed any other offense prohibited under the level 2
 3016 standards for screening set forth in chapter 435.

3017 (c) Proof of compliance with the level 2 background
 3018 screening requirements of chapter 435 which has been submitted
 3019 within the previous 5 years in compliance with any other health
 3020 care or assisted living licensure requirements of this state is
 3021 acceptable in fulfillment of the requirements of paragraph (a).

3022 (d) A provisional license may be granted to an applicant
3023 when each individual required by this section to undergo
3024 background screening has met the standards for the Department of
3025 Law Enforcement background check but the agency has not yet
3026 received background screening results from the Federal Bureau of
3027 Investigation. A standard license may be granted to the
3028 applicant upon the agency's receipt of a report of the results
3029 of the Federal Bureau of Investigation background screening for
3030 each individual required by this section to undergo background
3031 screening which confirms that all standards have been met, or
3032 upon the granting of a disqualification exemption by the agency
3033 as set forth in chapter 435. Any other person who is required to
3034 undergo level 2 background screening may serve in his or her
3035 capacity pending the agency's receipt of the report from the
3036 Federal Bureau of Investigation. However, the person may not
3037 continue to serve if the report indicates any violation of
3038 background screening standards and a disqualification exemption
3039 has not been requested of and granted by the agency as set forth
3040 in chapter 435.

3041 (f) Each applicant must submit to the agency a description
3042 and explanation of any conviction of an offense prohibited under
3043 the level 2 standards of chapter 435 by a member of the board of
3044 directors of the applicant, its officers, or any individual
3045 owning 5 percent or more of the applicant. This requirement does
3046 not apply to a director of a not-for-profit corporation or
3047 organization if the director serves solely in a voluntary
3048 capacity for the corporation or organization, does not regularly
3049 take part in the day-to-day operational decisions of the

3050 corporation or organization, receives no remuneration for his or
3051 her services on the corporation or organization's board of
3052 directors, and has no financial interest and has no family
3053 members with a financial interest in the corporation or
3054 organization, provided that the director and the not-for-profit
3055 corporation or organization include in the application a
3056 statement affirming that the director's relationship to the
3057 corporation satisfies the requirements of this paragraph.

3058 (g) A license may not be granted to an applicant if the
3059 applicant or managing employee has been found guilty of,
3060 regardless of adjudication, or has entered a plea of nolo
3061 contendere or guilty to, any offense prohibited under the level
3062 2 standards for screening set forth in chapter 435, unless an
3063 exemption from disqualification has been granted by the agency
3064 as set forth in chapter 435.

3065 Section 49. For the purpose of incorporating the amendment
3066 to section 435.04, Florida Statutes, in references thereto,
3067 section 400.5572, Florida Statutes, is reenacted to read:

3068 400.5572 Background screening.--

3069 (1)(a) Level 2 background screening must be conducted on
3070 each of the following persons, who shall be considered employees
3071 for the purposes of conducting screening under chapter 435:

3072 1. The adult day care center owner if an individual, the
3073 operator, and the financial officer.

3074 2. An officer or board member if the owner of the adult
3075 day care center is a firm, corporation, partnership, or
3076 association, or any person owning 5 percent or more of the
3077 facility, if the agency has probable cause to believe that such

3078 person has been convicted of any offense prohibited by s.
3079 435.04. For each officer, board member, or person owning 5
3080 percent or more who has been convicted of any such offense, the
3081 facility shall submit to the agency a description and
3082 explanation of the conviction at the time of license
3083 application. This subparagraph does not apply to a board member
3084 of a not-for-profit corporation or organization if the board
3085 member serves solely in a voluntary capacity, does not regularly
3086 take part in the day-to-day operational decisions of the
3087 corporation or organization, receives no remuneration for his or
3088 her services, and has no financial interest and has no family
3089 members with a financial interest in the corporation or
3090 organization, provided that the board member and facility submit
3091 a statement affirming that the board member's relationship to
3092 the facility satisfies the requirements of this subparagraph.

3093 (b) Proof of compliance with level 2 screening standards
3094 which has been submitted within the previous 5 years to meet any
3095 facility or professional licensure requirements of the agency or
3096 the Department of Health satisfies the requirements of this
3097 subsection.

3098 (c) The agency may grant a provisional license to an adult
3099 day care center applying for an initial license when each
3100 individual required by this subsection to undergo screening has
3101 completed the Department of Law Enforcement background check,
3102 but has not yet received results from the Federal Bureau of
3103 Investigation, or when a request for an exemption from
3104 disqualification has been submitted to the agency pursuant to s.
3105 435.07, but a response has not been issued.

3106 (2) The owner or administrator of an adult day care center
3107 must conduct level 1 background screening as set forth in
3108 chapter 435 on all employees hired on or after October 1, 1998,
3109 who provide basic services or supportive and optional services
3110 to the participants. Such persons satisfy this requirement if:

3111 (a) Proof of compliance with level 1 screening
3112 requirements obtained to meet any professional license
3113 requirements in this state is provided and accompanied, under
3114 penalty of perjury, by a copy of the person's current
3115 professional license and an affidavit of current compliance with
3116 the background screening requirements.

3117 (b) The person required to be screened has been
3118 continuously employed, without a breach in service that exceeds
3119 180 days, in the same type of occupation for which the person is
3120 seeking employment and provides proof of compliance with the
3121 level 1 screening requirement which is no more than 2 years old.
3122 Proof of compliance must be provided directly from one employer
3123 or contractor to another, and not from the person screened. Upon
3124 request, a copy of screening results shall be provided to the
3125 person screened by the employer retaining documentation of the
3126 screening.

3127 (c) The person required to be screened is employed by a
3128 corporation or business entity or related corporation or
3129 business entity that owns, operates, or manages more than one
3130 facility or agency licensed under this chapter, and for whom a
3131 level 1 screening was conducted by the corporation or business
3132 entity as a condition of initial or continued employment.

3133 Section 50. For the purpose of incorporating the amendment
 3134 to section 435.04, Florida Statutes, in references thereto,
 3135 paragraph (a) of subsection (3) of section 400.607, Florida
 3136 Statutes, is reenacted to read:

3137 400.607 Denial, suspension, or revocation of license;
 3138 imposition of administrative fine; grounds; injunctions.--

3139 (3) The agency may deny or revoke a license upon a
 3140 determination that:

3141 (a) Persons subject to level 2 background screening under
 3142 s. 400.6065 do not meet the screening standards of s. 435.04,
 3143 and exemptions from disqualification have not been provided by
 3144 the agency.

3145 Section 51. For the purpose of incorporating the amendment
 3146 to section 435.04, Florida Statutes, in references thereto,
 3147 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of
 3148 section 400.801, Florida Statutes, are reenacted to read:

3149 400.801 Homes for special services.--

3150 (4) Each applicant for licensure must comply with the
 3151 following requirements:

3152 (a) Upon receipt of a completed, signed, and dated
 3153 application, the agency shall require background screening, in
 3154 accordance with the level 2 standards for screening set forth in
 3155 chapter 435, of the managing employee, or other similarly titled
 3156 individual who is responsible for the daily operation of the
 3157 facility, and of the financial officer, or other similarly
 3158 titled individual who is responsible for the financial operation
 3159 of the facility, including billings for client care and
 3160 services, in accordance with the level 2 standards for screening

3161 set forth in chapter 435. The applicant must comply with the
3162 procedures for level 2 background screening as set forth in
3163 chapter 435.

3164 (b) The agency may require background screening of any
3165 other individual who is an applicant if the agency has probable
3166 cause to believe that he or she has been convicted of a crime or
3167 has committed any other offense prohibited under the level 2
3168 standards for screening set forth in chapter 435.

3169 (c) Proof of compliance with the level 2 background
3170 screening requirements of chapter 435 which has been submitted
3171 within the previous 5 years in compliance with any other health
3172 care or assisted living licensure requirements of this state is
3173 acceptable in fulfillment of the requirements of paragraph (a).

3174 (d) A provisional license may be granted to an applicant
3175 when each individual required by this section to undergo
3176 background screening has met the standards for the Department of
3177 Law Enforcement background check, but the agency has not yet
3178 received background screening results from the Federal Bureau of
3179 Investigation, or a request for a disqualification exemption has
3180 been submitted to the agency as set forth in chapter 435, but a
3181 response has not yet been issued. A standard license may be
3182 granted to the applicant upon the agency's receipt of a report
3183 of the results of the Federal Bureau of Investigation background
3184 screening for each individual required by this section to
3185 undergo background screening which confirms that all standards
3186 have been met, or upon the granting of a disqualification
3187 exemption by the agency as set forth in chapter 435. Any other
3188 person who is required to undergo level 2 background screening

3189 | may serve in his or her capacity pending the agency's receipt of
3190 | the report from the Federal Bureau of Investigation. However,
3191 | the person may not continue to serve if the report indicates any
3192 | violation of background screening standards and a
3193 | disqualification exemption has not been requested of and granted
3194 | by the agency as set forth in chapter 435.

3195 | (f) Each applicant must submit to the agency a description
3196 | and explanation of any conviction of an offense prohibited under
3197 | the level 2 standards of chapter 435 by a member of the board of
3198 | directors of the applicant, its officers, or any individual
3199 | owning 5 percent or more of the applicant. This requirement does
3200 | not apply to a director of a not-for-profit corporation or
3201 | organization if the director serves solely in a voluntary
3202 | capacity for the corporation or organization, does not regularly
3203 | take part in the day-to-day operational decisions of the
3204 | corporation or organization, receives no remuneration for his or
3205 | her services on the corporation or organization's board of
3206 | directors, and has no financial interest and has no family
3207 | members with a financial interest in the corporation or
3208 | organization, provided that the director and the not-for-profit
3209 | corporation or organization include in the application a
3210 | statement affirming that the director's relationship to the
3211 | corporation satisfies the requirements of this paragraph.

3212 | (g) A license may not be granted to an applicant if the
3213 | applicant or managing employee has been found guilty of,
3214 | regardless of adjudication, or has entered a plea of nolo
3215 | contendere or guilty to, any offense prohibited under the level
3216 | 2 standards for screening set forth in chapter 435, unless an

3217 exemption from disqualification has been granted by the agency
3218 as set forth in chapter 435.

3219 Section 52. For the purpose of incorporating the amendment
3220 to section 435.04, Florida Statutes, in references thereto,
3221 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (3) of
3222 section 400.805, Florida Statutes, are reenacted to read:

3223 400.805 Transitional living facilities.--

3224 (3) Each applicant for licensure must comply with the
3225 following requirements:

3226 (a) Upon receipt of a completed, signed, and dated
3227 application, the agency shall require background screening, in
3228 accordance with the level 2 standards for screening set forth in
3229 chapter 435, of the managing employee, or other similarly titled
3230 individual who is responsible for the daily operation of the
3231 facility, and of the financial officer, or other similarly
3232 titled individual who is responsible for the financial operation
3233 of the facility, including billings for client care and
3234 services. The applicant must comply with the procedures for
3235 level 2 background screening as set forth in chapter 435.

3236 (b) The agency may require background screening of any
3237 other individual who is an applicant if the agency has probable
3238 cause to believe that he or she has been convicted of a crime or
3239 has committed any other offense prohibited under the level 2
3240 standards for screening set forth in chapter 435.

3241 (c) Proof of compliance with the level 2 background
3242 screening requirements of chapter 435 which has been submitted
3243 within the previous 5 years in compliance with any other health

3244 care or assisted living licensure requirements of this state is
3245 acceptable in fulfillment of the requirements of paragraph (a).

3246 (d) A provisional license may be granted to an applicant
3247 when each individual required by this section to undergo
3248 background screening has met the standards for the Department of
3249 Law Enforcement background check, but the agency has not yet
3250 received background screening results from the Federal Bureau of
3251 Investigation, or a request for a disqualification exemption has
3252 been submitted to the agency as set forth in chapter 435, but a
3253 response has not yet been issued. A standard license may be
3254 granted to the applicant upon the agency's receipt of a report
3255 of the results of the Federal Bureau of Investigation background
3256 screening for each individual required by this section to
3257 undergo background screening which confirms that all standards
3258 have been met, or upon the granting of a disqualification
3259 exemption by the agency as set forth in chapter 435. Any other
3260 person who is required to undergo level 2 background screening
3261 may serve in his or her capacity pending the agency's receipt of
3262 the report from the Federal Bureau of Investigation. However,
3263 the person may not continue to serve if the report indicates any
3264 violation of background screening standards and a
3265 disqualification exemption has not been requested of and granted
3266 by the agency as set forth in chapter 435.

3267 (f) Each applicant must submit to the agency a description
3268 and explanation of any conviction of an offense prohibited under
3269 the level 2 standards of chapter 435 by a member of the board of
3270 directors of the applicant, its officers, or any individual
3271 owning 5 percent or more of the applicant. This requirement does

3272 not apply to a director of a not-for-profit corporation or
3273 organization if the director serves solely in a voluntary
3274 capacity for the corporation or organization, does not regularly
3275 take part in the day-to-day operational decisions of the
3276 corporation or organization, receives no remuneration for his or
3277 her services on the corporation or organization's board of
3278 directors, and has no financial interest and has no family
3279 members with a financial interest in the corporation or
3280 organization, provided that the director and the not-for-profit
3281 corporation or organization include in the application a
3282 statement affirming that the director's relationship to the
3283 corporation satisfies the requirements of this paragraph.

3284 (g) A license may not be granted to an applicant if the
3285 applicant or managing employee has been found guilty of,
3286 regardless of adjudication, or has entered a plea of nolo
3287 contendere or guilty to, any offense prohibited under the level
3288 2 standards for screening set forth in chapter 435, unless an
3289 exemption from disqualification has been granted by the agency
3290 as set forth in chapter 435.

3291 Section 53. For the purpose of incorporating the amendment
3292 to section 435.04, Florida Statutes, in references thereto,
3293 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (5) of
3294 section 400.906, Florida Statutes, are reenacted to read:

3295 400.906 Initial application for license.--

3296 (5) Each applicant for licensure must comply with the
3297 following requirements:

3298 (a) Upon receipt of a completed, signed, and dated
3299 application, the agency shall require background screening, in

3300 accordance with the level 2 standards for screening set forth in
3301 chapter 435, of the operator, and of the financial officer, or
3302 other similarly titled individual who is responsible for the
3303 financial operation of the center, including billings for
3304 patient care and services. The applicant must comply with the
3305 procedures for level 2 background screening as set forth in
3306 chapter 435, as well as the requirements of s. 435.03(3).

3307 (b) The agency may require background screening of any
3308 other individual who is an applicant if the agency has a
3309 reasonable basis for believing that he or she has been convicted
3310 of a crime or has committed any other offense prohibited under
3311 the level 2 standards for screening set forth in chapter 435.

3312 (c) Proof of compliance with the level 2 background
3313 screening requirements of chapter 435 which has been submitted
3314 within the previous 5 years in compliance with any other health
3315 care licensure requirements of this state is acceptable in
3316 fulfillment of the requirements of paragraph (a).

3317 (d) A provisional license may be granted to an applicant
3318 when each individual required by this section to undergo
3319 background screening has met the standards for the Department of
3320 Law Enforcement background check, but the agency has not yet
3321 received background screening results from the Federal Bureau of
3322 Investigation, or a request for a disqualification exemption has
3323 been submitted to the agency as set forth in chapter 435, but a
3324 response has not yet been issued. A standard license may be
3325 granted to the applicant upon the agency's receipt of a report
3326 of the results of the Federal Bureau of Investigation background
3327 screening for each individual required by this section to

3328 | undergo background screening which confirms that all standards
3329 | have been met, or upon the granting of a disqualification
3330 | exemption by the agency as set forth in chapter 435. Any other
3331 | person who is required to undergo level 2 background screening
3332 | may serve in his or her capacity pending the agency's receipt of
3333 | the report from the Federal Bureau of Investigation. However,
3334 | the person may not continue to serve if the report indicates any
3335 | violation of background screening standards and a
3336 | disqualification exemption has not been requested of and granted
3337 | by the agency as set forth in chapter 435.

3338 | (f) Each applicant must submit to the agency a description
3339 | and explanation of any conviction of an offense prohibited under
3340 | the level 2 standards of chapter 435 by a member of the board of
3341 | directors of the applicant, its officers, or any individual
3342 | owning 5 percent or more of the applicant. This requirement does
3343 | not apply to a director of a not-for-profit corporation or
3344 | organization if the director serves solely in a voluntary
3345 | capacity for the corporation or organization, does not regularly
3346 | take part in the day-to-day operational decisions of the
3347 | corporation or organization, receives no remuneration for his or
3348 | her services on the corporation or organization's board of
3349 | directors, and has no financial interest and has no family
3350 | members with a financial interest in the corporation or
3351 | organization, provided that the director and the not-for-profit
3352 | corporation or organization include in the application a
3353 | statement affirming that the director's relationship to the
3354 | corporation satisfies the requirements of this paragraph.

3355 (g) A license may not be granted to an applicant if the
 3356 applicant or managing employee has been found guilty of,
 3357 regardless of adjudication, or has entered a plea of nolo
 3358 contendere or guilty to, any offense prohibited under the level
 3359 2 standards for screening set forth in chapter 435, unless an
 3360 exemption from disqualification has been granted by the agency
 3361 as set forth in chapter 435.

3362 Section 54. For the purpose of incorporating the amendment
 3363 to section 435.04, Florida Statutes, in references thereto,
 3364 paragraphs (a), (b), (c), (e), and (f) of subsection (5) of
 3365 section 400.931, Florida Statutes, are reenacted to read:

3366 400.931 Application for license; fee; provisional license;
 3367 temporary permit.--

3368 (5) Each applicant for licensure must comply with the
 3369 following requirements:

3370 (a) Upon receipt of a completed, signed, and dated
 3371 application, the agency shall require background screening of
 3372 the applicant, in accordance with the level 2 standards for
 3373 screening set forth in chapter 435. As used in this subsection,
 3374 the term "applicant" means the general manager and the financial
 3375 officer or similarly titled individual who is responsible for
 3376 the financial operation of the licensed facility.

3377 (b) The agency may require background screening for a
 3378 member of the board of directors of the licensee or an officer
 3379 or an individual owning 5 percent or more of the licensee if the
 3380 agency has probable cause to believe that such individual has
 3381 been convicted of an offense prohibited under the level 2
 3382 standards for screening set forth in chapter 435.

3383 (c) Proof of compliance with the level 2 background
3384 screening requirements of chapter 435 which has been submitted
3385 within the previous 5 years in compliance with any other health
3386 care licensure requirements of this state is acceptable in
3387 fulfillment of paragraph (a).

3388 (e) Each applicant must submit to the agency a description
3389 and explanation of any conviction of an offense prohibited under
3390 the level 2 standards of chapter 435 by a member of the board of
3391 directors of the applicant, its officers, or any individual
3392 owning 5 percent or more of the applicant. This requirement does
3393 not apply to a director of a not-for-profit corporation or
3394 organization if the director serves solely in a voluntary
3395 capacity for the corporation or organization, does not regularly
3396 take part in the day-to-day operational decisions of the
3397 corporation or organization, receives no remuneration for his or
3398 her services on the corporation's or organization's board of
3399 directors, and has no financial interest and has no family
3400 members with a financial interest in the corporation or
3401 organization, provided that the director and the not-for-profit
3402 corporation or organization include in the application a
3403 statement affirming that the director's relationship to the
3404 corporation satisfies the requirements of this provision.

3405 (f) A license may not be granted to any potential licensee
3406 if any applicant, administrator, or financial officer has been
3407 found guilty of, regardless of adjudication, or has entered a
3408 plea of nolo contendere or guilty to, any offense prohibited
3409 under the level 2 standards for screening set forth in chapter

3410 435, unless an exemption from disqualification has been granted
 3411 by the agency as set forth in chapter 435.

3412 Section 55. For the purpose of incorporating the amendment
 3413 to section 435.04, Florida Statutes, in references thereto,
 3414 paragraphs (a), (b), (c), (d), and (f) of subsection (10) of
 3415 section 400.962, Florida Statutes, are reenacted to read:

3416 400.962 License required; license application.--

3417 (10)(a) Upon receipt of a completed, signed, and dated
 3418 application, the agency shall require background screening of
 3419 the applicant, in accordance with the level 2 standards for
 3420 screening set forth in chapter 435. As used in this subsection,
 3421 the term "applicant" means the facility administrator, or
 3422 similarly titled individual who is responsible for the day-to-
 3423 day operation of the licensed facility, and the facility
 3424 financial officer, or similarly titled individual who is
 3425 responsible for the financial operation of the licensed
 3426 facility.

3427 (b) The agency may require background screening for a
 3428 member of the board of directors of the licensee or an officer
 3429 or an individual owning 5 percent or more of the licensee if the
 3430 agency has probable cause to believe that such individual has
 3431 been convicted of an offense prohibited under the level 2
 3432 standards for screening set forth in chapter 435.

3433 (c) Proof of compliance with the level 2 background
 3434 screening requirements of chapter 435 which has been submitted
 3435 within the previous 5 years in compliance with any other
 3436 licensure requirements under this chapter satisfies the
 3437 requirements of paragraph (a). Proof of compliance with

3438 background screening which has been submitted within the
3439 previous 5 years to fulfill the requirements of the Financial
3440 Services Commission and the Office of Insurance Regulation under
3441 chapter 651 as part of an application for a certificate of
3442 authority to operate a continuing care retirement community
3443 satisfies the requirements for the Department of Law Enforcement
3444 and Federal Bureau of Investigation background checks.

3445 (d) A provisional license may be granted to an applicant
3446 when each individual required by this section to undergo
3447 background screening has met the standards for the Department of
3448 Law Enforcement background check, but the agency has not yet
3449 received background screening results from the Federal Bureau of
3450 Investigation, or a request for a disqualification exemption has
3451 been submitted to the agency as set forth in chapter 435, but a
3452 response has not yet been issued. A license may be granted to
3453 the applicant upon the agency's receipt of a report of the
3454 results of the Federal Bureau of Investigation background
3455 screening for each individual required by this section to
3456 undergo background screening which confirms that all standards
3457 have been met, or upon the granting of a disqualification
3458 exemption by the agency as set forth in chapter 435. Any other
3459 person who is required to undergo level 2 background screening
3460 may serve in his or her capacity pending the agency's receipt of
3461 the report from the Federal Bureau of Investigation; however,
3462 the person may not continue to serve if the report indicates any
3463 violation of background screening standards and a
3464 disqualification exemption has not been granted by the agency as
3465 set forth in chapter 435.

3466 (f) Each applicant must submit to the agency a description
3467 and explanation of any conviction of an offense prohibited under
3468 the level 2 standards of chapter 435 by a member of the board of
3469 directors of the applicant, its officers, or any individual
3470 owning 5 percent or more of the applicant. This requirement does
3471 not apply to a director of a not-for-profit corporation or
3472 organization if the director serves solely in a voluntary
3473 capacity for the corporation or organization, does not regularly
3474 take part in the day-to-day operational decisions of the
3475 corporation or organization, receives no remuneration for his or
3476 her services on the corporation's or organization's board of
3477 directors, and has no financial interest and has no family
3478 members with a financial interest in the corporation or
3479 organization, provided that the director and the not-for-profit
3480 corporation or organization include in the application a
3481 statement affirming that the director's relationship to the
3482 corporation satisfies the requirements of this paragraph.

3483 Section 56. For the purpose of incorporating the amendment
3484 to section 435.04, Florida Statutes, in references thereto,
3485 paragraphs (b) and (d) of subsection (7) of section 400.991,
3486 Florida Statutes, are reenacted to read:

3487 400.991 License requirements; background screenings;
3488 prohibitions.--

3489 (7) Each applicant for licensure shall comply with the
3490 following requirements:

3491 (b) Upon receipt of a completed, signed, and dated
3492 application, the agency shall require background screening of
3493 the applicant, in accordance with the level 2 standards for

3494 screening set forth in chapter 435. Proof of compliance with the
3495 level 2 background screening requirements of chapter 435 which
3496 has been submitted within the previous 5 years in compliance
3497 with any other health care licensure requirements of this state
3498 is acceptable in fulfillment of this paragraph.

3499 (d) A license may not be granted to a clinic if the
3500 applicant has been found guilty of, regardless of adjudication,
3501 or has entered a plea of nolo contendere or guilty to, any
3502 offense prohibited under the level 2 standards for screening set
3503 forth in chapter 435, or a violation of insurance fraud under s.
3504 817.234, within the past 5 years. If the applicant has been
3505 convicted of an offense prohibited under the level 2 standards
3506 or insurance fraud in any jurisdiction, the applicant must show
3507 that his or her civil rights have been restored prior to
3508 submitting an application.

3509 Section 57. For the purpose of incorporating the amendment
3510 to section 435.04, Florida Statutes, in references thereto,
3511 paragraph (e) of subsection (2) of section 402.302, Florida
3512 Statutes, is reenacted to read:

3513 402.302 Definitions.--

3514 (2) "Child care facility" includes any child care center
3515 or child care arrangement which provides child care for more
3516 than five children unrelated to the operator and which receives
3517 a payment, fee, or grant for any of the children receiving care,
3518 wherever operated, and whether or not operated for profit. The
3519 following are not included:

3520 (e) Operators of transient establishments, as defined in
3521 chapter 509, which provide child care services solely for the

3522 | guests of their establishment or resort, provided that all child
 3523 | care personnel of the establishment are screened according to
 3524 | the level 2 screening requirements of chapter 435.

3525 | Section 58. For the purpose of incorporating the amendment
 3526 | to section 435.04, Florida Statutes, in references thereto,
 3527 | paragraph (a) of subsection (2) of section 402.305, Florida
 3528 | Statutes, is reenacted to read:

3529 | 402.305 Licensing standards; child care facilities.--

3530 | (2) PERSONNEL.--Minimum standards for child care personnel
 3531 | shall include minimum requirements as to:

3532 | (a) Good moral character based upon screening. This
 3533 | screening shall be conducted as provided in chapter 435, using
 3534 | the level 2 standards for screening set forth in that chapter.

3535 | Section 59. For the purpose of incorporating the amendment
 3536 | to section 435.04, Florida Statutes, in references thereto,
 3537 | subsection (3) of section 402.3054, Florida Statutes, is
 3538 | reenacted to read:

3539 | 402.3054 Child enrichment service providers.--

3540 | (3) A child enrichment service provider shall be of good
 3541 | moral character based upon screening. This screening shall be
 3542 | conducted as provided in chapter 435, using the level 2
 3543 | standards for screening set forth in that chapter. A child
 3544 | enrichment service provider must meet the screening requirements
 3545 | prior to providing services to a child in a child care facility.
 3546 | A child enrichment service provider who has met the screening
 3547 | standards shall not be required to be under the direct and
 3548 | constant supervision of child care personnel.

3549 Section 60. For the purpose of incorporating the amendment
3550 to section 435.04, Florida Statutes, in references thereto,
3551 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of
3552 section 483.30, Florida Statutes, are reenacted to read:

3553 483.30 Licensing of centers.--

3554 (2) Each applicant for licensure must comply with the
3555 following requirements:

3556 (a) Upon receipt of a completed, signed, and dated
3557 application, the agency shall require background screening, in
3558 accordance with the level 2 standards for screening set forth in
3559 chapter 435, of the managing employee, or other similarly titled
3560 individual who is responsible for the daily operation of the
3561 center, and of the financial officer, or other similarly titled
3562 individual who is responsible for the financial operation of the
3563 center, including billings for patient services. The applicant
3564 must comply with the procedures for level 2 background screening
3565 as set forth in chapter 435, as well as the requirements of s.
3566 435.03(3).

3567 (b) The agency may require background screening of any
3568 other individual who is an applicant if the agency has probable
3569 cause to believe that he or she has been convicted of a crime or
3570 has committed any other offense prohibited under the level 2
3571 standards for screening set forth in chapter 435.

3572 (c) Proof of compliance with the level 2 background
3573 screening requirements of chapter 435 which has been submitted
3574 within the previous 5 years in compliance with any other health
3575 care licensure requirements of this state is acceptable in
3576 fulfillment of the requirements of paragraph (a).

3577 (d) A provisional license may be granted to an applicant
3578 when each individual required by this section to undergo
3579 background screening has met the standards for the Department of
3580 Law Enforcement background check, but the agency has not yet
3581 received background screening results from the Federal Bureau of
3582 Investigation, or a request for a disqualification exemption has
3583 been submitted to the agency as set forth in chapter 435 but a
3584 response has not yet been issued. A license may be granted to
3585 the applicant upon the agency's receipt of a report of the
3586 results of the Federal Bureau of Investigation background
3587 screening for each individual required by this section to
3588 undergo background screening which confirms that all standards
3589 have been met, or upon the granting of a disqualification
3590 exemption by the agency as set forth in chapter 435. Any other
3591 person who is required to undergo level 2 background screening
3592 may serve in his or her capacity pending the agency's receipt of
3593 the report from the Federal Bureau of Investigation. However,
3594 the person may not continue to serve if the report indicates any
3595 violation of background screening standards and a
3596 disqualification exemption has not been requested of and granted
3597 by the agency as set forth in chapter 435.

3598 (f) Each applicant must submit to the agency a description
3599 and explanation of any conviction of an offense prohibited under
3600 the level 2 standards of chapter 435 by a member of the board of
3601 directors of the applicant, its officers, or any individual
3602 owning 5 percent or more of the applicant. This requirement does
3603 not apply to a director of a not-for-profit corporation or
3604 organization if the director serves solely in a voluntary

3605 capacity for the corporation or organization, does not regularly
 3606 take part in the day-to-day operational decisions of the
 3607 corporation or organization, receives no remuneration for his or
 3608 her services on the corporation or organization's board of
 3609 directors, and has no financial interest and has no family
 3610 members with a financial interest in the corporation or
 3611 organization, provided that the director and the not-for-profit
 3612 corporation or organization include in the application a
 3613 statement affirming that the director's relationship to the
 3614 corporation satisfies the requirements of this paragraph.

3615 (g) A license may not be granted to an applicant if the
 3616 applicant or managing employee has been found guilty of,
 3617 regardless of adjudication, or has entered a plea of nolo
 3618 contendere or guilty to, any offense prohibited under the level
 3619 2 standards for screening set forth in chapter 435, unless an
 3620 exemption from disqualification has been granted by the agency
 3621 as set forth in chapter 435.

3622 Section 61. For the purpose of incorporating the amendment
 3623 to section 435.04, Florida Statutes, in references thereto,
 3624 paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of
 3625 section 483.101, Florida Statutes, are reenacted to read:

3626 483.101 Application for clinical laboratory license.--

3627 (2) Each applicant for licensure must comply with the
 3628 following requirements:

3629 (a) Upon receipt of a completed, signed, and dated
 3630 application, the agency shall require background screening, in
 3631 accordance with the level 2 standards for screening set forth in
 3632 chapter 435, of the managing director or other similarly titled

3633 individual who is responsible for the daily operation of the
3634 laboratory and of the financial officer, or other similarly
3635 titled individual who is responsible for the financial operation
3636 of the laboratory, including billings for patient services. The
3637 applicant must comply with the procedures for level 2 background
3638 screening as set forth in chapter 435, as well as the
3639 requirements of s. 435.03(3).

3640 (b) The agency may require background screening of any
3641 other individual who is an applicant if the agency has probable
3642 cause to believe that he or she has been convicted of a crime or
3643 has committed any other offense prohibited under the level 2
3644 standards for screening set forth in chapter 435.

3645 (c) Proof of compliance with the level 2 background
3646 screening requirements of chapter 435 which has been submitted
3647 within the previous 5 years in compliance with any other health
3648 care licensure requirements of this state is acceptable in
3649 fulfillment of the requirements of paragraph (a).

3650 (d) A provisional license may be granted to an applicant
3651 when each individual required by this section to undergo
3652 background screening has met the standards for the Department of
3653 Law Enforcement background check but the agency has not yet
3654 received background screening results from the Federal Bureau of
3655 Investigation, or a request for a disqualification exemption has
3656 been submitted to the agency as set forth in chapter 435 but a
3657 response has not yet been issued. A license may be granted to
3658 the applicant upon the agency's receipt of a report of the
3659 results of the Federal Bureau of Investigation background
3660 screening for each individual required by this section to

3661 | undergo background screening which confirms that all standards
3662 | have been met, or upon the granting of a disqualification
3663 | exemption by the agency as set forth in chapter 435. Any other
3664 | person who is required to undergo level 2 background screening
3665 | may serve in his or her capacity pending the agency's receipt of
3666 | the report from the Federal Bureau of Investigation. However,
3667 | the person may not continue to serve if the report indicates any
3668 | violation of background screening standards and a
3669 | disqualification exemption has not been requested of and granted
3670 | by the agency as set forth in chapter 435.

3671 | (f) Each applicant must submit to the agency a description
3672 | and explanation of any conviction of an offense prohibited under
3673 | the level 2 standards of chapter 435 by a member of the board of
3674 | directors of the applicant, its officers, or any individual
3675 | owning 5 percent or more of the applicant. This requirement does
3676 | not apply to a director of a not-for-profit corporation or
3677 | organization if the director serves solely in a voluntary
3678 | capacity for the corporation or organization, does not regularly
3679 | take part in the day-to-day operational decisions of the
3680 | corporation or organization, receives no remuneration for his or
3681 | her services on the corporation or organization's board of
3682 | directors, and has no financial interest and has no family
3683 | members with a financial interest in the corporation or
3684 | organization, provided that the director and the not-for-profit
3685 | corporation or organization include in the application a
3686 | statement affirming that the director's relationship to the
3687 | corporation satisfies the requirements of this paragraph.

3688 (g) A license may not be granted to an applicant if the
 3689 applicant or managing employee has been found guilty of,
 3690 regardless of adjudication, or has entered a plea of nolo
 3691 contendere or guilty to, any offense prohibited under the level
 3692 2 standards for screening set forth in chapter 435, unless an
 3693 exemption from disqualification has been granted by the agency
 3694 as set forth in chapter 435.

3695 Section 62. For the purpose of incorporating the amendment
 3696 to section 435.04, Florida Statutes, in references thereto,
 3697 subsection (5) of section 744.1085, Florida Statutes, is
 3698 reenacted to read:

3699 744.1085 Regulation of professional guardians;
 3700 application; bond required; educational requirements.--

3701 (5) As required in s. 744.3135, each professional guardian
 3702 shall allow a level 2 background screening of the guardian and
 3703 employees of the guardian in accordance with the provisions of
 3704 s. 435.04.

3705 Section 63. For the purpose of incorporating the amendment
 3706 to section 435.04, Florida Statutes, in references thereto,
 3707 paragraph (b) of subsection (2) of section 984.01, Florida
 3708 Statutes, is reenacted to read:

3709 984.01 Purposes and intent; personnel standards and
 3710 screening.--

3711 (2) The Department of Juvenile Justice or the Department
 3712 of Children and Family Services, as appropriate, may contract
 3713 with the Federal Government, other state departments and
 3714 agencies, county and municipal governments and agencies, public
 3715 and private agencies, and private individuals and corporations

3716 | in carrying out the purposes of, and the responsibilities
 3717 | established in, this chapter.

3718 | (b) The Department of Juvenile Justice and the Department
 3719 | of Children and Family Services shall require employment
 3720 | screening pursuant to chapter 435, using the level 2 standards
 3721 | set forth in that chapter for personnel in programs for children
 3722 | or youths.

3723 | Section 64. For the purpose of incorporating the amendment
 3724 | to section 435.04, Florida Statutes, in references thereto,
 3725 | paragraph (b) of subsection (2) of section 985.01, Florida
 3726 | Statutes, is reenacted to read:

3727 | 985.01 Purposes and intent; personnel standards and
 3728 | screening.--

3729 | (2) The Department of Juvenile Justice or the Department
 3730 | of Children and Family Services, as appropriate, may contract
 3731 | with the Federal Government, other state departments and
 3732 | agencies, county and municipal governments and agencies, public
 3733 | and private agencies, and private individuals and corporations
 3734 | in carrying out the purposes of, and the responsibilities
 3735 | established in, this chapter.

3736 | (b) The Department of Juvenile Justice and the Department
 3737 | of Children and Family Services shall require employment
 3738 | screening pursuant to chapter 435, using the level 2 standards
 3739 | set forth in that chapter for personnel in programs for children
 3740 | or youths.

3741 | Section 65. For the purpose of incorporating the amendment
 3742 | to section 435.04, Florida Statutes, in references thereto,

3743 paragraphs (a) and (b) of subsection (7) of section 1002.36,
 3744 Florida Statutes, are reenacted to read:

3745 1002.36 Florida School for the Deaf and the Blind.--

3746 (7) PERSONNEL SCREENING.--

3747 (a) The Board of Trustees of the Florida School for the
 3748 Deaf and the Blind shall, because of the special trust or
 3749 responsibility of employees of the school, require all employees
 3750 and applicants for employment to undergo personnel screening and
 3751 security background investigations as provided in chapter 435,
 3752 using the level 2 standards for screening set forth in that
 3753 chapter, as a condition of employment and continued employment.
 3754 The cost of a personnel screening and security background
 3755 investigation for an employee of the school shall be paid by the
 3756 school. The cost of such a screening and investigation for an
 3757 applicant for employment may be paid by the school.

3758 (b) As a prerequisite for initial and continuing
 3759 employment at the Florida School for the Deaf and the Blind:

3760 1. The applicant or employee shall submit to the Florida
 3761 School for the Deaf and the Blind a complete set of fingerprints
 3762 taken by an authorized law enforcement agency or an employee of
 3763 the Florida School for the Deaf and the Blind who is trained to
 3764 take fingerprints. The Florida School for the Deaf and the Blind
 3765 shall submit the fingerprints to the Department of Law
 3766 Enforcement for state processing and the Federal Bureau of
 3767 Investigation for federal processing.

3768 2.a. The applicant or employee shall attest to the minimum
 3769 standards for good moral character as contained in chapter 435,

3770 using the level 2 standards set forth in that chapter under
 3771 penalty of perjury.

3772 b. New personnel shall be on a probationary status pending
 3773 a determination of compliance with such minimum standards for
 3774 good moral character. This paragraph is in addition to any
 3775 probationary status provided for by Florida law or Florida
 3776 School for the Deaf and the Blind rules or collective bargaining
 3777 contracts.

3778 3. The Florida School for the Deaf and the Blind shall
 3779 review the record of the applicant or employee with respect to
 3780 the crimes contained in s. 435.04 and shall notify the applicant
 3781 or employee of its findings. When disposition information is
 3782 missing on a criminal record, it shall be the responsibility of
 3783 the applicant or employee, upon request of the Florida School
 3784 for the Deaf and the Blind, to obtain and supply within 30 days
 3785 the missing disposition information to the Florida School for
 3786 the Deaf and the Blind. Failure to supply missing information
 3787 within 30 days or to show reasonable efforts to obtain such
 3788 information shall result in automatic disqualification of an
 3789 applicant and automatic termination of an employee.

3790 4. After an initial personnel screening and security
 3791 background investigation, written notification shall be given to
 3792 the affected employee within a reasonable time prior to any
 3793 subsequent screening and investigation.

3794 Section 66. For the purpose of incorporating the
 3795 amendments to sections 943.0585 and 943.059, Florida Statutes,
 3796 in references thereto, paragraph (a) of subsection (2) and

3797 subsection (6) of section 943.0582, Florida Statutes, are
 3798 reenacted to read:

3799 943.0582 Prearrest, postarrest, or teen court diversion
 3800 program expunction.--

3801 (2)(a) As used in this section, the term "expunction" has
 3802 the same meaning ascribed in and effect as s. 943.0585, except
 3803 that:

3804 1. The provisions of s. 943.0585(4)(a) do not apply,
 3805 except that the criminal history record of a person whose record
 3806 is expunged pursuant to this section shall be made available
 3807 only to criminal justice agencies for the purpose of determining
 3808 eligibility for prearrest, postarrest, or teen court diversion
 3809 programs; when the record is sought as part of a criminal
 3810 investigation; or when the subject of the record is a candidate
 3811 for employment with a criminal justice agency. For all other
 3812 purposes, a person whose record is expunged under this section
 3813 may lawfully deny or fail to acknowledge the arrest and the
 3814 charge covered by the expunged record.

3815 2. Records maintained by local criminal justice agencies
 3816 in the county in which the arrest occurred that are eligible for
 3817 expunction pursuant to this section shall be sealed as the term
 3818 is used in s. 943.059.

3819 (6) Expunction or sealing granted under this section does
 3820 not prevent the minor who receives such relief from petitioning
 3821 for the expunction or sealing of a later criminal history record
 3822 as provided for in ss. 943.0585 and 943.059, if the minor is
 3823 otherwise eligible under those sections.

3824 Section 67. For the purpose of incorporating the amendment
3825 to section 943.059, Florida Statutes, in references thereto,
3826 subsections (7), (8), and (9) of section 943.053, Florida
3827 Statutes, are reenacted to read:

3828 943.053 Dissemination of criminal justice information;
3829 fees.--

3830 (7) Notwithstanding the provisions of s. 943.0525, and any
3831 user agreements adopted pursuant thereto, and notwithstanding
3832 the confidentiality of sealed records as provided for in s.
3833 943.059, the sheriff of any county that has contracted with a
3834 private entity to operate a county detention facility pursuant
3835 to the provisions of s. 951.062 shall provide that private
3836 entity, in a timely manner, copies of the Florida criminal
3837 history records for its inmates. The sheriff may assess a charge
3838 for the Florida criminal history records pursuant to the
3839 provisions of chapter 119. Sealed records received by the
3840 private entity under this section remain confidential and exempt
3841 from the provisions of s. 119.07(1).

3842 (8) Notwithstanding the provisions of s. 943.0525, and any
3843 user agreements adopted pursuant thereto, and notwithstanding
3844 the confidentiality of sealed records as provided for in s.
3845 943.059, the Department of Corrections shall provide, in a
3846 timely manner, copies of the Florida criminal history records
3847 for inmates housed in a private state correctional facility to
3848 the private entity under contract to operate the facility
3849 pursuant to the provisions of s. 944.105 or s. 957.03. The
3850 department may assess a charge for the Florida criminal history
3851 records pursuant to the provisions of chapter 119. Sealed

3852 records received by the private entity under this section remain
 3853 confidential and exempt from the provisions of s. 119.07(1).

3854 (9) Notwithstanding the provisions of s. 943.0525 and any
 3855 user agreements adopted pursuant thereto, and notwithstanding
 3856 the confidentiality of sealed records as provided for in s.
 3857 943.059, the Department of Juvenile Justice or any other state
 3858 or local criminal justice agency may provide copies of the
 3859 Florida criminal history records for juvenile offenders
 3860 currently or formerly detained or housed in a contracted
 3861 juvenile assessment center or detention facility or serviced in
 3862 a contracted treatment program and for employees or other
 3863 individuals who will have access to these facilities, only to
 3864 the entity under direct contract with the Department of Juvenile
 3865 Justice to operate these facilities or programs pursuant to the
 3866 provisions of s. 985.411. The criminal justice agency providing
 3867 such data may assess a charge for the Florida criminal history
 3868 records pursuant to the provisions of chapter 119. Sealed
 3869 records received by the private entity under this section remain
 3870 confidential and exempt from the provisions of s. 119.07(1).
 3871 Information provided under this section shall be used only for
 3872 the criminal justice purpose for which it was requested and may
 3873 not be further disseminated.

3874 Section 68. The creation of sections 393.135, 394.4593,
 3875 and 916.1075, Florida Statutes, by this act shall apply to
 3876 offenses committed on or after the effective date of this act.

3877 Section 69. Paragraph (b) of subsection (4) of section
 3878 20.19, Florida Statutes, is amended to read:

3879 | 20.19 Department of Children and Family Services.--There
3880 | is created a Department of Children and Family Services.

3881 | (4) PROGRAM OFFICES AND SUPPORT OFFICES.--

3882 | (b) The following program offices are established:

3883 | 1. Adult Services.

3884 | 2. Child Care Services.

3885 | 3. Domestic Violence ~~Developmental Disabilities~~.

3886 | 4. Economic Self-Sufficiency Services.

3887 | 5. Family Safety.

3888 | 6. Mental Health.

3889 | 7. Refugee Services.

3890 | 8. Substance Abuse.

3891 | Section 70. Section 20.197, Florida Statutes, is created
3892 | to read:

3893 | 20.197 Agency for Persons with Disabilities.--There is
3894 | created the Agency for Persons with Disabilities, housed within
3895 | the Department of Children and Family Services for
3896 | administrative purposes only. The agency shall be a separate
3897 | budget entity not subject to control, supervision, or direction
3898 | by the Department of Children and Family Services in any manner,
3899 | including, but not limited to, personnel, purchasing,
3900 | transactions involving real or personal property, and budgetary
3901 | matters.

3902 | (1) The director of the agency shall be the agency head
3903 | for all purposes and shall be appointed by the Governor and
3904 | serve at the pleasure of the Governor. The director shall
3905 | administer the affairs of the agency and establish
3906 | administrative units as needed and may, within available

3907 resources, employ assistants, professional staff, and other
3908 employees as necessary to discharge the powers and duties of the
3909 agency.

3910 (2) The agency shall be responsible for the provision of
3911 all services provided to persons with developmental disabilities
3912 pursuant to chapter 393, including the operation of all state
3913 institutional programs and the programmatic management of
3914 Medicaid waivers established to provide services to persons with
3915 developmental disabilities.

3916 (3) The agency shall engage in such other administrative
3917 activities as are deemed necessary to effectively and
3918 efficiently address the needs of the agency's clients.

3919 (4) The agency shall enter into an interagency agreement
3920 that delineates the responsibilities of the Agency for Health
3921 Care Administration for the following:

3922 (a) The terms, and execution of contracts with Medicaid
3923 providers for the provision of services provided through
3924 Medicaid, including federally approved waiver programs.

3925 (b) The billing, payment, and reconciliation of claims for
3926 Medicaid services reimbursed by the agency.

3927 (c) The implementation of utilization management measures,
3928 including the prior authorization of services plans and the
3929 streamlining and consolidation of waivers services, to ensure
3930 the cost-effective provision of needed Medicaid services and to
3931 maximize the number of persons with access to such services.

3932 (d) A system of approving each client's plan of care to
3933 ensure that the services on the plan of care are those that

3934 without which the client would require the services of an
 3935 intermediate care facility for the developmentally disabled.

3936 Section 71. Section 393.063, Florida Statutes, is amended
 3937 to read:

3938 393.063 Definitions.--For the purposes of this chapter:

3939 ~~(1) "Active treatment" means the provision of services by~~
 3940 ~~an interdisciplinary team necessary to maximize a client's~~
 3941 ~~individual independence or prevent regression or loss of~~
 3942 ~~functional status.~~

3943 (1)(2) "Agency" means the Agency for Persons with
 3944 Disabilities Health Care Administration.

3945 (2)(3) "Autism" means a pervasive, neurologically based
 3946 developmental disability of extended duration which causes
 3947 severe learning, communication, and behavior disorders with age
 3948 of onset during infancy or childhood. Individuals with autism
 3949 exhibit impairment in reciprocal social interaction, impairment
 3950 in verbal and nonverbal communication and imaginative ability,
 3951 and a markedly restricted repertoire of activities and
 3952 interests.

3953 (3)(4) "Cerebral palsy" means a group of disabling
 3954 symptoms of extended duration which results from damage to the
 3955 developing brain that may occur before, during, or after birth
 3956 and that results in the loss or impairment of control over
 3957 voluntary muscles. For the purposes of this definition,
 3958 cerebral palsy does not include those symptoms or impairments
 3959 resulting solely from a stroke.

3960 ~~(4)(5)~~ "Client" means any person determined eligible by
 3961 the agency department for ~~developmental~~ services under this
 3962 chapter.

3963 ~~(5)(6)~~ "Client advocate" means a friend or relative of the
 3964 client, or of the client's immediate family, who advocates for
 3965 the best interests of the client in any proceedings under this
 3966 chapter in which the client or his or her family has the right
 3967 or duty to participate.

3968 ~~(6)(7)~~ "Comprehensive assessment" means the process ~~which~~
 3969 ~~is~~ used to determine eligibility for ~~developmental~~ services
 3970 under this chapter and develop the family or individual support
 3971 plan. ~~The term includes review and evaluation of information~~
 3972 ~~provided by the applicant, the individual receiving supports or~~
 3973 ~~services through developmental services, or the family, and~~
 3974 ~~others providing supports or services to the individual or~~
 3975 ~~family, as well as the use of formal assessment instruments.~~

3976 ~~(7)(8)~~ "Comprehensive transitional education program"
 3977 means a group of jointly operating centers or units, the
 3978 collective purpose of which is to provide a sequential series of
 3979 educational care, training, treatment, habilitation, and
 3980 rehabilitation services to persons who have developmental
 3981 ~~disabilities, as defined in subsection (12),~~ and who have severe
 3982 or moderate maladaptive behaviors. However, nothing in this
 3983 subsection shall require such ~~comprehensive transitional~~
 3984 ~~education~~ programs to provide services only to persons with
 3985 developmental disabilities, ~~as defined in subsection (12)~~. All
 3986 such services shall be temporary in nature and delivered in a
 3987 structured residential setting with the primary goal of

3988 incorporating the normalization principle to establish permanent
 3989 residence for persons with maladaptive behaviors in facilities
 3990 not associated with the comprehensive transitional education
 3991 program. The staff shall include psychologists and teachers
 3992 who, ~~and such staff personnel~~ shall be available to provide
 3993 services in each component center or unit of the program. The
 3994 psychologists shall be individuals who are licensed in this
 3995 state and certified as behavior analysts in this state, or
 3996 individuals who ~~meet the professional requirements established~~
 3997 ~~by the department for district behavior analysts and are~~
 3998 certified as behavior analysts pursuant to s. 393.17 ~~in this~~
 3999 state.

4000 (a) Comprehensive transitional education programs shall
 4001 include a minimum of two component centers or units, ~~as defined~~
 4002 ~~in this paragraph~~, one of which shall be either an intensive
 4003 treatment and educational center or a transitional training and
 4004 educational center, which provide services to persons with
 4005 maladaptive behaviors in the following sequential order:

4006 1. Intensive treatment and educational center. This
 4007 component is a self-contained residential unit providing
 4008 intensive psychological and educational programming for persons
 4009 with severe maladaptive behaviors, whose behaviors preclude
 4010 placement in a less restrictive environment due to the threat of
 4011 danger or injury to themselves or others.

4012 2. Transitional training and educational center. This
 4013 component is a residential unit for persons with moderate
 4014 maladaptive behaviors, providing concentrated psychological and

4015 | educational programming emphasizing a transition toward a less
4016 | restrictive environment.

4017 | 3. Community transition residence. This component is a
4018 | residential center providing educational programs and such
4019 | support services, training, and care as are needed to assist
4020 | persons with maladaptive behaviors to avoid regression to more
4021 | restrictive environments while preparing them for more
4022 | independent living. Continuous-shift staff shall be required for
4023 | this component.

4024 | 4. Alternative living center. This component is a
4025 | residential unit providing an educational and family living
4026 | environment for persons with maladaptive behaviors, in a
4027 | moderately unrestricted setting. Residential staff shall be
4028 | required for this component.

4029 | 5. Independent living education center. This component is
4030 | a facility providing a family living environment for persons
4031 | with maladaptive behaviors, in a largely unrestricted setting
4032 | which includes education and monitoring appropriate to support
4033 | the development of independent living skills ~~by the students~~.

4034 | (b) Centers or units that are components of a
4035 | comprehensive transitional education program are subject to the
4036 | license issued to the comprehensive transitional education
4037 | program and may be located on either single or multiple sites.

4038 | (c) Comprehensive transitional education programs shall
4039 | develop individual education plans for each person with
4040 | maladaptive behaviors who receives services therein. Such
4041 | individual education plans shall be developed in accordance with

4042 the criteria specified ~~included~~ in ~~Pub. L. No. 94-142~~, 20 U.S.C.
 4043 ss. 401 et seq., and 34 C.F.R. part 300.

4044 (d) In no instance shall the total number of persons with
 4045 maladaptive behaviors being provided services in a comprehensive
 4046 transitional education program exceed 120.

4047 (e) This subsection shall authorize licensure for
 4048 comprehensive transitional education programs which by July 1,
 4049 1989:

- 4050 1. Are in actual operation; or
- 4051 2. Own a fee simple interest in real property for which a
 4052 county or city government has approved zoning allowing for the
 4053 placement of the facilities described in this subsection, and
 4054 have registered an intent with the department to operate a
 4055 comprehensive transitional education program. However, nothing
 4056 shall prohibit the assignment by such a registrant to another
 4057 entity at a different site within the state, so long as there is
 4058 compliance with all criteria of the comprehensive transitional
 4059 education program and local zoning requirements and provided
 4060 that each residential facility within the component centers or
 4061 units of the program authorized under this subparagraph shall
 4062 not exceed a capacity of 15 persons.

4063 ~~(9) "Day service" means the care, protection, and~~
 4064 ~~supervision of a client for a period of less than 24 hours a day~~
 4065 ~~on a regular basis which supplements for the client, in~~
 4066 ~~accordance with his or her individual needs, daily care,~~
 4067 ~~enrichment opportunities, and health supervision.~~

4068 ~~(8)(10)~~ "Day habilitation facility" means any
 4069 nonresidential facility which provides day habilitation
 4070 services.

4071 (9) "Day habilitation service" means assistance with the
 4072 acquisition, retention, or improvement in self-help,
 4073 socialization, and adaptive skills which takes place in a
 4074 nonresidential setting, separate from the home or facility in
 4075 which the individual resides. Day habilitation services shall
 4076 focus on enabling the individual to attain or maintain his or
 4077 her maximum functional level and shall be coordinated with any
 4078 physical, occupational, or speech therapies listed in the plan
 4079 of care.

4080 ~~(11) "Department" means the Department of Children and~~
 4081 ~~Family Services.~~

4082 ~~(10)(12)~~ "Developmental disability" means a disorder or
 4083 syndrome that is attributable to retardation, cerebral palsy,
 4084 autism, spina bifida, or Prader-Willi syndrome and that
 4085 constitutes a substantial handicap that can reasonably be
 4086 expected to continue indefinitely.

4087 ~~(11)(13)~~ "Developmental disabilities ~~services~~ institution"
 4088 means a state-owned and state-operated facility, formerly known
 4089 as a "Sunland Center," providing for the care, habilitation, and
 4090 rehabilitation of clients with developmental disabilities.

4091 ~~(14) "Developmental training facility" means any~~
 4092 ~~nonresidential facility which provides basic training and~~
 4093 ~~habilitation to clients.~~

4094 (12)(15) "Direct service provider," also known as
 4095 "caregiver" in chapters 39 and 415 or "caretaker" in provisions

4096 relating to employment security checks, means a person 18 years
 4097 of age or older who has direct contact with individuals with
 4098 developmental disabilities, or has access to a client's living
 4099 areas or to a client's funds or personal property, and is not a
 4100 relative of such ~~unrelated to the individuals with developmental~~
 4101 ~~disabilities.~~

4102 ~~(a) The term "direct service provider" also includes any~~
 4103 ~~person, including members of the direct service provider's~~
 4104 ~~family, over 12 years of age who resides with the direct service~~
 4105 ~~provider when:~~

4106 ~~1. The direct service provider provides supports or~~
 4107 ~~services in his or her residence;~~

4108 ~~2. The direct service provider provides supports or~~
 4109 ~~services in a facility adjacent to his or her residence; or~~

4110 ~~3. The person residing with the direct service provider~~
 4111 ~~has direct contact with the individual with developmental~~
 4112 ~~disabilities during the hours of provision of supports or~~
 4113 ~~services.~~

4114 ~~(b) Persons residing with the direct service provider,~~
 4115 ~~including family members, who are between the ages of 12 years~~
 4116 ~~and 18 years are not required to be fingerprinted, but shall be~~
 4117 ~~screened for delinquency records.~~

4118 ~~(c) A volunteer who assists on an intermittent basis for~~
 4119 ~~less than 40 hours per month is not a direct service provider~~
 4120 ~~for the purposes of screening if the volunteer is under the~~
 4121 ~~direct and constant supervision of persons who meet the~~
 4122 ~~personnel requirements of s. 393.0655.~~

4123 ~~(d) A physician, nurse, or other professional licensed and~~
 4124 ~~regulated by the Department of Business and Professional~~
 4125 ~~Regulation is not a direct service provider for the purposes of~~
 4126 ~~screening if the service he or she is providing to a client is~~
 4127 ~~within the scope of practice for which he or she is licensed.~~

4128 ~~(e) A person selected by the family or the individual with~~
 4129 ~~developmental disabilities and paid by the family or the~~
 4130 ~~individual to provide supports or services is not a direct~~
 4131 ~~service provider for the purpose of screening.~~

4132 ~~(16) "District" means a service district of the~~
 4133 ~~department.~~

4134 (13)~~(17)~~ "Domicile" means the place where a client legally
 4135 resides, which place is his or her permanent home. Domicile may
 4136 be established as provided in s. 222.17. Domicile may not be
 4137 established in Florida by a minor who has no parent domiciled in
 4138 Florida, or by a minor who has no legal guardian domiciled in
 4139 Florida, or by any alien not classified as a resident alien.

4140 (14)~~(18)~~ "Enclave" means a work station in public or
 4141 private business or industry where a small group of persons with
 4142 developmental disabilities is employed and receives training and
 4143 support services or follow-along services among nonhandicapped
 4144 workers.

4145 (15)~~(19)~~ "Epilepsy" means a chronic brain disorder of
 4146 various causes which is characterized by recurrent seizures due
 4147 to excessive discharge of cerebral neurons. When found
 4148 concurrently with retardation, autism, or cerebral palsy,
 4149 epilepsy is considered a secondary disability for which the

4150 client is eligible to receive services to ameliorate this
4151 condition pursuant ~~according to the provisions of~~ this chapter.

4152 ~~(16)(20)~~ "Express and informed consent" means consent
4153 voluntarily given in writing with sufficient knowledge and
4154 comprehension of the subject matter involved to enable the
4155 person giving consent to make an understanding and enlightened
4156 decision without any element of force, fraud, deceit, duress, or
4157 other form of constraint or coercion.

4158 ~~(17)(21)~~ "Family care program" means the program
4159 established in s. 393.068 ~~an alternative to residential~~
4160 ~~placement, in which a direct service provider provides a home~~
4161 ~~for a client and assists him or her to the extent necessary for~~
4162 ~~the client to participate in normal activities and to meet the~~
4163 ~~demands of daily living. The program provides the support needed~~
4164 ~~by the client's family or caretaker to meet the individual needs~~
4165 ~~of the client.~~

4166 ~~(18)(22)~~ "Follow-along services" means those support
4167 services ~~which shall be~~ provided to persons with developmental
4168 disabilities in all supported employment programs and may
4169 include, but are not limited to, family support, assistance in
4170 meeting transportation and medical needs, employer intervention,
4171 performance evaluation, advocacy, replacement, retraining or
4172 promotional assistance, or other similar support services.

4173 ~~(19)(23)~~ "Foster care facility" means a residential
4174 facility which provides a family living environment including
4175 supervision and care necessary to meet the physical, emotional,
4176 and social needs of its residents. The capacity of such a
4177 facility shall not be more than three residents.

4178 (20)~~(24)~~ "Group home facility" means a residential
 4179 facility which provides a family living environment including
 4180 supervision and care necessary to meet the physical, emotional,
 4181 and social needs of its residents. The capacity of such a
 4182 facility shall be at least 4 ~~residents~~ but not more than 15
 4183 residents. For the purposes of this chapter, group home
 4184 facilities shall not be considered commercial enterprises.

4185 (21)~~(25)~~ "Guardian advocate" means a person appointed by
 4186 the circuit court to represent a person with developmental
 4187 disabilities in any proceedings brought pursuant to s. 393.12,
 4188 and excludes the use of the same term as applied to a guardian
 4189 advocate for mentally ill persons in chapter 394.

4190 (22)~~(26)~~ "Habilitation" means the process by which a
 4191 client is assisted to acquire and maintain those life skills
 4192 which enable the client to cope more effectively with the
 4193 demands of his or her condition and environment and to raise the
 4194 level of his or her physical, mental, and social efficiency. It
 4195 includes, but is not limited to, programs of formal structured
 4196 education and treatment.

4197 (23)~~(27)~~ "High-risk child" means, for the purposes of this
 4198 chapter, a child from birth to 5 years of age with one or more
 4199 of the following characteristics:

4200 (a) A developmental delay in cognition, language, or
 4201 physical development.

4202 (b) A child surviving a catastrophic infectious or
 4203 traumatic illness known to be associated with developmental
 4204 delay, when funds are specifically appropriated.

4205 (c) A child with a parent or guardian with developmental
 4206 disabilities ~~who is developmentally disabled and~~ who requires
 4207 assistance in meeting the child's developmental needs.

4208 (d) A child who has a physical or genetic anomaly
 4209 associated with developmental disability.

4210 ~~(24)(28)~~ "Intermediate care facility for the
 4211 developmentally disabled" or "ICF/DD" means a residential
 4212 facility licensed and certified pursuant to part XI of chapter
 4213 400 ~~in accordance with state law, and certified by the Federal~~
 4214 ~~Government pursuant to the Social Security Act, as a provider of~~
 4215 ~~Medicaid services to persons who are developmentally disabled.~~
 4216 ~~The capacity of such a facility shall not be more than 120~~
 4217 ~~clients.~~

4218 ~~(25)(29)~~ "Job coach" means a person who provides
 4219 employment-related training at a work site to individuals with
 4220 developmental disabilities.

4221 ~~(26)(30)~~ "Medical/dental services" means those services
 4222 which are provided or ordered for a client by a person licensed
 4223 pursuant to the provisions of chapter 458, chapter 459, or
 4224 chapter 466. Such services may include, but are not limited to,
 4225 prescription drugs, specialized therapies, nursing supervision,
 4226 hospitalization, dietary services, prosthetic devices, surgery,
 4227 specialized equipment and supplies, adaptive equipment, and
 4228 other services as required to prevent or alleviate a medical or
 4229 dental condition.

4230 ~~(27)(31)~~ "Mobile work crew" means a group of workers
 4231 employed by an agency that provides services outside the agency,
 4232 usually under service contracts.

4233 (28)~~(32)~~ "Normalization principle" means the principle of
 4234 letting the client obtain an existence as close to the normal as
 4235 possible, making available to the client patterns and conditions
 4236 of everyday life which are as close as possible to the norm and
 4237 patterns of the mainstream of society.

4238 (29)~~(33)~~ "Personal services" include, but are not limited
 4239 to, such services as: individual assistance with or supervision
 4240 of essential activities of daily living for self-care, including
 4241 ambulation, bathing, dressing, eating, grooming, and toileting,
 4242 and other similar services that ~~which~~ the agency ~~department~~ may
 4243 define by rule. "Personal services" shall not be construed to
 4244 mean the provision of medical, nursing, dental, or mental health
 4245 services by the staff of a facility, except as provided in this
 4246 chapter. In addition, an emergency response device installed in
 4247 the apartment or living area of a resident shall not be
 4248 classified as a personal service.

4249 (30)~~(34)~~ "Prader-Willi syndrome" means an inherited
 4250 condition typified by neonatal hypotonia with failure to thrive,
 4251 hyperphagia or an excessive drive to eat which leads to obesity
 4252 usually at 18 to 36 months of age, mild to moderate retardation,
 4253 hypogonadism, short stature, mild facial dysmorphism, and a
 4254 characteristic neurobehavior.

4255 (31)~~(35)~~ "Reassessment" means a process which periodically
 4256 develops, through annual review and revision of a client's
 4257 family or individual support plan, a knowledgeable statement of
 4258 current needs and past development for each client.

4259 ~~(36) "Rehabilitation workshop facility" means a place~~
 4260 ~~operated by a for-profit or nonprofit agency engaged in the~~

4261 ~~manufacture or production of products or provision of services,~~
4262 ~~which provides gainful rehabilitation to severely handicapped~~
4263 ~~persons until such persons can become employed or which provides~~
4264 ~~gainful work to persons who are developmentally disabled.~~

4265 (32)~~(37)~~ "Relative" means an individual who is connected
4266 by affinity or consanguinity to the client and who is 18 years
4267 of age or more.

4268 (33)~~(38)~~ "Resident" means any person who is
4269 developmentally disabled residing at a residential facility in
4270 the state, whether or not such person is a client of the agency
4271 department.

4272 (34)~~(39)~~ "Residential facility" means a facility providing
4273 room and board and personal care for persons with developmental
4274 disabilities.

4275 (35) "Residential habilitation" means assistance provided
4276 with acquisition, retention, or improvement in skills related to
4277 activities of daily living, such as personal grooming and
4278 cleanliness, bedmaking and household chores, eating and the
4279 preparation of food, and the social and adaptive skills
4280 necessary to enable the individual to reside in a
4281 noninstitutional setting.

4282 (36)~~(40)~~ "Residential habilitation center" means a
4283 community residential facility that provides residential
4284 habilitation. ~~operated primarily for the diagnosis, treatment,~~
4285 ~~habilitation, or rehabilitation of its residents, which facility~~
4286 ~~provides, in a structured residential setting, individualized~~
4287 ~~continuing evaluation, planning, 24-hour supervision, and~~
4288 ~~coordination and integration of health or rehabilitative~~

4289 ~~services to help each resident reach his or her maximum~~
4290 ~~functioning capabilities.~~ The capacity of such a facility shall
4291 not be fewer ~~less~~ than nine residents. After October 1, 1989, no
4292 new residential habilitation centers shall be licensed and the
4293 licensed capacity shall not be increased for any existing
4294 residential habilitation center.

4295 (37)~~(41)~~ "Respite service" means appropriate, short-term,
4296 temporary care that is provided to a person with developmental
4297 disabilities to meet the planned or emergency needs of the
4298 person ~~with developmental disabilities~~ or the family or other
4299 direct service provider.

4300 (38)~~(42)~~ "Retardation" means significantly subaverage
4301 general intellectual functioning existing concurrently with
4302 deficits in adaptive behavior and manifested during the period
4303 from conception to age 18. "Significantly subaverage general
4304 intellectual functioning," for the purpose of this definition,
4305 means performance which is two or more standard deviations from
4306 the mean score on a standardized intelligence test specified in
4307 the rules of the agency ~~department~~. "Adaptive behavior," for
4308 the purpose of this definition, means the effectiveness or
4309 degree with which an individual meets the standards of personal
4310 independence and social responsibility expected of his or her
4311 age, cultural group, and community.

4312 ~~(43) "Screening," for purposes of employment, contracting,~~
4313 ~~or certification, means the act of assessing the background of~~
4314 ~~direct service providers and independent support coordinators,~~
4315 ~~who are not related to clients for whom they provide services,~~
4316 ~~and includes, but is not limited to, employment history checks,~~

4317 ~~local criminal records checks through local law enforcement~~
4318 ~~agencies, fingerprinting for all purposes and checks in this~~
4319 ~~subsection, statewide criminal records checks through the~~
4320 ~~Department of Law Enforcement, and federal criminal records~~
4321 ~~checks through the Federal Bureau of Investigation; except that~~
4322 ~~screening for volunteers included under the definition of~~
4323 ~~personnel includes only local criminal records checks through~~
4324 ~~local law enforcement agencies for current residence and~~
4325 ~~residence immediately prior to employment as a volunteer, if~~
4326 ~~different; and statewide criminal records correspondence checks~~
4327 ~~through the Department of Law Enforcement.~~

4328 (39)~~(44)~~ "Severe self-injurious behavior" means any
4329 chronic behavior that results in injury to the person's own
4330 body, which includes, but is not limited to, self-hitting, head
4331 banging, self-biting, scratching, and the ingestion of harmful
4332 or potentially harmful nutritive or nonnutritive substances.

4333 (40)~~(45)~~ "Specialized therapies" means those treatments or
4334 activities prescribed by and provided by an appropriately
4335 trained, licensed, or certified professional or staff person and
4336 may include, but are not limited to, physical therapy, speech
4337 therapy, respiratory therapy, occupational therapy, behavior
4338 therapy, physical management services, and related specialized
4339 equipment and supplies.

4340 (41)~~(46)~~ "Spina bifida" means, for purposes of this
4341 chapter, a person with a medical diagnosis of spina bifida
4342 cystica or myelomeningocele.

4343 (42)~~(47)~~ "Support coordinator" means a person who is
4344 designated by the agency ~~department~~ to assist individuals and

4345 families in identifying their ~~desires~~, capacities, needs, and
 4346 resources, as well as finding and gaining access to necessary
 4347 supports and services; coordinating the delivery of supports and
 4348 services; advocating on behalf of the individual and family;
 4349 maintaining relevant records; and monitoring and evaluating the
 4350 delivery of supports and services to determine the extent to
 4351 which they meet the needs and expectations identified by the
 4352 individual, family, and others who participated in the
 4353 development of the support plan.

4354 ~~(43)(48)~~ "Supported employee" means a person whose
 4355 ~~developmental disability has traditionally kept him or her from~~
 4356 ~~integrated, community-based employment and~~ who requires and
 4357 receives supported employment ~~ongoing support or follow-along~~
 4358 services in order to maintain community-based employment.

4359 ~~(44)(49)~~ "Supported employment" means employment located
 4360 or provided in a normal employment setting which provides at
 4361 least 20 hours employment per week in an integrated work
 4362 setting, with earnings paid on a commensurate wage basis, and
 4363 for which continued support ~~is or follow-along services~~ are
 4364 needed for ~~continuing~~ job maintenance.

4365 ~~(45)(50)~~ "Supported living" means a category of
 4366 individually determined services designed and coordinated in
 4367 such a manner as to provide assistance to adult clients who
 4368 require ongoing supports to live as independently as possible in
 4369 their own homes, to be integrated into the community, and to
 4370 participate in community life to the fullest extent possible.

4371 ~~(46)(51)~~ "Training" means a planned approach to assisting
 4372 a client to attain or maintain his or her maximum potential and

4373 includes services ranging from sensory stimulation to
 4374 instruction in skills for independent living and employment.

4375 (47)~~(52)~~ "Treatment" means the prevention, amelioration,
 4376 or cure of a client's physical and mental disabilities or
 4377 illnesses.

4378 Section 72. Subsections (1), (3), (4), and (5) of section
 4379 393.064, Florida Statutes, are amended to read:

4380 393.064 Prevention.--

4381 (1) The agency ~~Department of Children and Family Services~~
 4382 shall give priority to the development, planning, and
 4383 implementation of programs which have the potential to prevent,
 4384 correct, cure, or reduce the severity of developmental
 4385 disabilities. The agency ~~department~~ shall direct an interagency
 4386 ~~interdepartmental~~ and interprogram effort for the continued
 4387 development of a prevention plan and program. The agency
 4388 ~~department~~ shall identify, through demonstration projects,
 4389 through ~~departmental~~ program evaluation, and through monitoring
 4390 of programs and projects conducted outside of the agency
 4391 ~~department~~, any medical, social, economic, or educational
 4392 methods, techniques, or procedures that ~~which~~ have the potential
 4393 to effectively ameliorate, correct, or cure developmental
 4394 disabilities. The program ~~department~~ shall determine the costs
 4395 and benefits that would be associated with such prevention
 4396 efforts and shall implement, or recommend the implementation of,
 4397 those methods, techniques, or procedures which are found likely
 4398 to be cost-beneficial. ~~The department in its legislative budget~~
 4399 ~~request shall identify funding needs for such prevention~~
 4400 ~~programs.~~

4401 (3) Other agencies of state government shall cooperate
 4402 with and assist the agency ~~department~~, within available
 4403 resources, in implementing programs which have the potential to
 4404 prevent, or reduce the severity of, developmental disabilities
 4405 and shall consider the findings and recommendations of the
 4406 agency ~~department~~ in developing and implementing agency programs
 4407 and formulating agency budget requests.

4408 (4) There is created at the developmental services
 4409 institution in Gainesville a research and education unit. Such
 4410 unit shall be named the Raymond C. Philips Research and
 4411 Education Unit. The functions of such unit shall include:

4412 (a) Research into the etiology of developmental
 4413 disabilities.

4414 (b) Ensuring that new knowledge is rapidly disseminated
 4415 throughout the developmental services program of the agency
 4416 ~~Department of Children and Family Services~~.

4417 (c) Diagnosis of unusual conditions and syndromes
 4418 associated with developmental disabilities in clients identified
 4419 throughout the developmental services programs.

4420 (d) Evaluation of families of clients with developmental
 4421 disabilities of genetic origin in order to provide them with
 4422 genetic counseling aimed at preventing the recurrence of the
 4423 disorder in other family members.

4424 (e) Ensuring that health professionals in the
 4425 developmental services institution at Gainesville have access to
 4426 information systems that will allow them to remain updated on
 4427 newer knowledge and maintain their postgraduate education
 4428 standards.

4429 (f) Enhancing staff training for professionals throughout
 4430 the agency department in the areas of genetics and developmental
 4431 disabilities.

4432 (5) The agency Department of Children and Family Services
 4433 shall have the authority, within available resources, to
 4434 contract for the supervision and management of the Raymond C.
 4435 Philips Research and Education Unit, and such contract shall
 4436 include specific program objectives.

4437 Section 73. Section 393.0655, Florida Statutes, is amended
 4438 to read:

4439 393.0655 Screening of direct service providers.--

4440 (1) MINIMUM STANDARDS.--The agency department shall
 4441 require level 2 employment screening pursuant to chapter 435,
 4442 ~~using the level 2 standards for screening set forth in that~~
 4443 ~~chapter,~~ for direct service providers who are unrelated to their
 4444 clients, including support coordinators, and managers and
 4445 supervisors of residential facilities or comprehensive
 4446 transitional education programs licensed under s. 393.967 and
 4447 any other person, including volunteers, who provide care or
 4448 services, who have access to a client's living areas, or who
 4449 have access to a client's funds or personal property. Background
 4450 screening shall include employment history checks as provided in
 4451 s. 435.03(1) and local criminal records checks through local law
 4452 enforcement agencies.

4453 (a) A volunteer who assists on an intermittent basis for
 4454 less than 40 hours per month does not have to be screened, if
 4455 the volunteer is under the direct and constant supervision of
 4456 persons who meet the screening requirements of this section.

4457 (b) Licensed physicians, nurses, or other professionals
 4458 licensed and regulated by the Department of Health are not
 4459 subject to background screening pursuant to this section if they
 4460 are providing a service that is within their scope of licensed
 4461 practice.

4462 (c) A person selected by the family or the individual with
 4463 developmental disabilities and paid by the family or the
 4464 individual to provide supports or services is not required to
 4465 have a background screening under this section.

4466 (d) Persons residing with the direct services provider,
 4467 including family members, are subject to background screening;
 4468 however, such persons who are 12 to 18 years of age shall be
 4469 screened for delinquency records only.

4470 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency
 4471 ~~department~~ may grant exemptions from disqualification from
 4472 working with children or adults with developmental disabilities
 4473 ~~the developmentally disabled~~ as provided in s. 435.07.

4474 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
 4475 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
 4476 and the state criminal records checks shall be borne by the
 4477 employer or by the employee or individual who is being screened.

4478 (4) EXCLUSION FROM OWNING, OPERATING, OR BEING EMPLOYED BY
 4479 A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY; HEARINGS
 4480 PROVIDED.--

4481 (a) The agency ~~department~~ shall deny, suspend, terminate,
 4482 or revoke a license, certification, rate agreement, purchase
 4483 order, or contract, or pursue other remedies provided in s.
 4484 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu

4485 of denial, suspension, termination, or revocation for failure to
 4486 comply with this section.

4487 (b) When the agency ~~department~~ has reasonable cause to
 4488 believe that grounds for denial or termination of employment
 4489 exist, it shall notify, in writing, the employer and the direct
 4490 service provider affected, stating the specific record which
 4491 indicates noncompliance with the standards in this section.

4492 (c) The procedures established for hearing under chapter
 4493 120 shall be available to the employer and the direct service
 4494 provider in order to present evidence relating either to the
 4495 accuracy of the basis of exclusion or to the denial of an
 4496 exemption from disqualification.

4497 (d) Refusal on the part of an employer to dismiss a direct
 4498 service provider who has been found to be in noncompliance with
 4499 standards of this section shall result in automatic denial,
 4500 termination, or revocation of the license, certification, rate
 4501 agreement, purchase order, or contract, in addition to any other
 4502 remedies pursued by the agency ~~department~~.

4503 Section 74. Section 393.066, Florida Statutes, is amended
 4504 to read:

4505 393.066 Community services and treatment for persons who
 4506 are developmentally disabled.--

4507 (1) The agency ~~Department of Children and Family Services~~
 4508 shall plan, develop, organize, and implement its programs of
 4509 services and treatment for persons who are developmentally
 4510 disabled ~~along district lines. The goal of such programs shall~~
 4511 ~~be~~ to allow clients to live as independently as possible in

4512 | their own homes or communities and to achieve productive lives
 4513 | as close to normal as possible.

4514 | ~~(2) All programs of services and treatment for clients~~
 4515 | ~~shall be administered through the districts and shall serve all~~
 4516 | ~~clients regardless of the type of residential setting in which~~
 4517 | ~~the client lives.~~ All elements of community-based services
 4518 | shall be made available, in each service district and
 4519 | eligibility for these services shall be consistent across the
 4520 | state districts. In addition, all purchased services shall be
 4521 | approved by the agency district.

4522 | ~~(2)(3)~~ All services needed shall be purchased instead of
 4523 | provided directly by the agency department, when such
 4524 | arrangement is more cost-efficient than having those services
 4525 | provided directly by the department.

4526 | ~~(3)(4)~~ Community-based services that are medically
 4527 | necessary to prevent institutionalization shall, to the extent
 4528 | of available resources, include:

4529 | (a) Day habilitation services, including developmental
 4530 | training services.

4531 | (b) Family care services.

4532 | (c) Guardian advocate referral services.

4533 | (d) Medical/dental services, except that medical services
 4534 | shall not be provided to clients with spina bifida except as
 4535 | specifically appropriated by the Legislature.

4536 | (e) Parent training.

4537 | (f) Recreation.

4538 | (g) Residential services.

4539 | (h) Respite services.

- 4540 (i) Social services.
- 4541 (j) Specialized therapies.
- 4542 (k) Supported employment, including enclave, job coach,
- 4543 mobile work crew, and follow-along services.
- 4544 (l) Supported living.
- 4545 (m) Training, including behavioral programming.
- 4546 (n) Transportation.
- 4547 (o) Other habilitative and rehabilitative services as
- 4548 needed.

4549
 4550 ~~Services to clients with spina bifida shall not include medical~~
 4551 ~~services except as appropriated by the Legislature.~~

4552 ~~(5) Provided it is consistent with the intent of the~~
 4553 ~~Legislature, the department shall prioritize increased~~
 4554 ~~appropriations provided for community-based services for~~
 4555 ~~developmentally disabled individuals toward individualized,~~
 4556 ~~community-based supports and services for consumers and their~~
 4557 ~~families. Further, the department's 5-year plan for~~
 4558 ~~Developmental Services shall reflect a priority toward~~
 4559 ~~individualized, community-based supports and services for~~
 4560 ~~consumers and their families.~~

4561 (4)~~(6)~~ The agency department shall utilize the services of
 4562 private businesses, not-for-profit organizations, and units of
 4563 local government whenever such services are more cost-efficient
 4564 than such services provided directly by the department,
 4565 including arrangements for provision of residential facilities.

4566 (5)~~(7)~~ In order to improve the potential for utilization
 4567 of more cost-effective, community-based residential facilities,

4568 | the agency ~~department~~ shall promote the statewide development of
 4569 | day habilitation services for clients who live with a direct
 4570 | service provider in a community-based residential facility and
 4571 | who do not require 24-hour-a-day care in a hospital or other
 4572 | health care institution, but who may, in the absence of day
 4573 | habilitation services, require admission to a developmental
 4574 | disabilities ~~services~~ institution. Each day service facility
 4575 | shall provide a protective physical environment for clients,
 4576 | ensure that direct service providers meet ~~the~~ minimum screening
 4577 | standards ~~for good moral character~~ as required ~~contained~~ in s.
 4578 | 393.0655, make available to all day habilitation service
 4579 | participants at least one meal on each day of operation, provide
 4580 | facilities to enable participants to obtain needed rest while
 4581 | attending the program, as appropriate, and provide social and
 4582 | educational activities designed to stimulate interest and
 4583 | provide socialization skills.

4584 | (6) To promote independence and productivity, the agency
 4585 | shall provide supports and services, within available resources,
 4586 | to assist clients enrolled in Medicaid waivers who choose to
 4587 | pursue gainful employment.

4588 | (7)~~(8)~~ For the purpose of making needed community-based
 4589 | residential facilities available at the least possible cost to
 4590 | the state, the agency ~~department~~ is authorized to lease
 4591 | privately owned residential facilities under long-term rental
 4592 | agreements, if such rental agreements are projected to be less
 4593 | costly to the state over the useful life of the facility than
 4594 | state purchase or state construction of such a facility. ~~In~~
 4595 | ~~addition, the department is authorized to permit, on any public~~

4596 | ~~land to which the department holds the lease, construction of a~~
 4597 | ~~residential facility for which the department has entered into a~~
 4598 | ~~long-term rental agreement as specified in this subsection.~~

4599 | ~~(8)(9)~~ The agency ~~department~~ may adopt rules to ensure
 4600 | compliance with federal laws or regulations that apply to
 4601 | services provided pursuant to this section.

4602 | Section 75. Section 393.0661, Florida Statutes, is amended
 4603 | to read:

4604 | 393.0661 Home and community-based services delivery
 4605 | system; comprehensive redesign.--The Legislature finds that the
 4606 | home and community-based services delivery system for persons
 4607 | with developmental disabilities and the availability of
 4608 | appropriated funds are two of the critical elements in making
 4609 | services available. Therefore, it is the intent of the
 4610 | Legislature that the Agency for Persons with Disabilities
 4611 | ~~Department of Children and Family Services~~ shall develop and
 4612 | implement a comprehensive redesign of the system.

4613 | (1) The redesign of the home and community-based services
 4614 | system shall include, at a minimum, all actions necessary to
 4615 | achieve an appropriate rate structure, client choice within a
 4616 | specified service package, appropriate assessment strategies, an
 4617 | efficient billing process that contains reconciliation and
 4618 | monitoring components, a redefined role for support coordinators
 4619 | that avoids potential conflicts of interest, and ensures that
 4620 | family/client budgets are linked to levels of need. ~~Prior to the~~
 4621 | ~~release of funds in the lump sum appropriation, the department~~
 4622 | ~~shall present a plan to the Executive Office of the Governor,~~
 4623 | ~~the House Fiscal Responsibility Council, and the Senate~~

4624 ~~Appropriations Committee. The plan must result in a full~~
4625 ~~implementation of the redesigned system no later than July 1,~~
4626 ~~2003. At a minimum, the plan must provide that the portions~~
4627 ~~related to direct provider enrollment and billing will be~~
4628 ~~operational no later than March 31, 2003. The plan must further~~
4629 ~~provide that a more effective needs assessment instrument will~~
4630 ~~be deployed by January 1, 2003, and that all clients will be~~
4631 ~~assessed with this device by June 30, 2003.~~

4632 (a) In no event may The agency shall use department select
4633 an assessment instrument without appropriate evidence that is it
4634 will be reliable and valid. Once such evidence has been
4635 obtained, however, The agency may contract with department shall
4636 determine the feasibility of contracting with an external vendor
4637 to apply the new assessment device to all clients receiving
4638 services through the Medicaid waiver. In lieu of using an
4639 external vendor or, the department may use support coordinators
4640 to complete client for the assessments if it develops sufficient
4641 safeguards and training to ensure ongoing significantly improve
4642 the inter-rater reliability of the support coordinators
4643 administering the assessment.

4644 (b) The agency, with the concurrence of the Agency for
4645 Health Care Administration, may contract for the determination
4646 of medical necessity and establishment of individual budgets.

4647 (2) A provider of services rendered to persons with
4648 developmental disabilities pursuant to a federally-approved
4649 waiver shall be reimbursed according to a rate methodology based
4650 upon an analysis of the expenditure history and prospective
4651 costs of providers participating in the waiver program, or under

4652 any other methodology developed by the Agency for Health Care
4653 Administration, in consultation with the Agency for Persons with
4654 Disabilities, and approved by the Federal Government in
4655 accordance with the waiver.

4656 (3) Pending the adoption of rate methodologies pursuant to
4657 non-emergency rulemaking under s. 120.54, the Agency for Health
4658 Care Administration may, at any time, adopt emergency rules
4659 under s. 120.54(4) in order to comply with subsection (4). In
4660 adopting such emergency rules, the agency need not make the
4661 findings required by s. 120.54(4)(a), and such rules shall be
4662 exempt from time limitations provided in s. 120.54(4)(c) and
4663 shall remain in effect until replaced by another emergency rule
4664 or the non-emergency adoption of the rate methodology.

4665 (4) Nothing in this section or in any administrative rule
4666 shall be construed to prevent or limit the Agency for Health
4667 Care Administration, in consultation with the Agency for Persons
4668 with Disabilities, from adjusting fees, reimbursement rates,
4669 lengths of stay, number of visits, or number of services, or
4670 from limiting enrollment, or making any other adjustment
4671 necessary to comply with the availability of moneys and any
4672 limitations or directions provided for in the General
4673 Appropriations Act. If at any time, based upon an analysis by
4674 the Agency for Health Care Administration in consultation with
4675 the Agency for Persons with Disabilities, the cost of home and
4676 community-based waiver services are expected to exceed the
4677 appropriated amount, the Agency for Health Care Administration
4678 may implement any adjustment, including provider rate

4679 reductions, within 30 days in order to remain within the
4680 appropriation.

4681 Section 76. Section 393.068, Florida Statutes, is amended
4682 to read:

4683 393.068 Family care program.--

4684 (1) The family care program is established for the purpose
4685 of providing services and support to families and individuals
4686 with developmental disabilities in order to maintain the
4687 individual in the home environment and avoid costly out-of-home
4688 residential placement. ~~The Legislature recognizes the~~
4689 ~~importance of family support in the long-range success of~~
4690 ~~deinstitutionalization.~~ Services and support available to
4691 families and individuals with developmental disabilities shall
4692 emphasize community living and enable individuals with
4693 developmental disabilities to enjoy typical lifestyles. ~~Support~~
4694 ~~and flexibility in coordinating support and services are core~~
4695 ~~elements in caring for the individual who is developmentally~~
4696 ~~disabled.~~ One way to accomplish this is to recognize that
4697 families are the greatest resource available to individuals who
4698 have developmental disabilities and ~~that families~~ must be
4699 supported in their role as primary care givers.

4700 (2) Services and support authorized under this program
4701 shall, to the extent of available resources, include the
4702 services listed under s. 393.066~~(4)~~ and, in addition, shall
4703 include, but not be limited to:

- 4704 (a) Attendant care.
4705 (b) Barrier-free modifications to the home.
4706 (c) Home visitation by agency workers.

4707 (d) In-home subsidies.
 4708 (e) Low-interest loans.
 4709 ~~(f) Parent training.~~
 4710 ~~(g) Respite care.~~
 4711 (f)(h) Modifications for vehicles used to transport the
 4712 individual with a developmental disability.
 4713 (g)(i) Facilitated communication.
 4714 (h)(j) Family counseling.
 4715 (i)(k) Equipment and supplies.
 4716 (j)(l) Self-advocacy training.
 4717 (k)(m) Roommate services.
 4718 (l)(n) Integrated community activities.
 4719 (m)(o) Emergency services.
 4720 (n)(p) Support coordination.
 4721 (o) Supported employment.
 4722 (p)(q) Other support services as identified by the family
 4723 or individual.
 4724 ~~(2) Provided it is consistent with the intent of the~~
 4725 ~~Legislature, the department shall prioritize increased~~
 4726 ~~appropriations provided for family-based services for~~
 4727 ~~developmentally disabled individuals toward individualized,~~
 4728 ~~family-based supports and services for consumers and their~~
 4729 ~~families. Further, the department's 5-year plan for~~
 4730 ~~developmental services shall reflect a priority toward~~
 4731 ~~individualized, family-based supports and services for consumers~~
 4732 ~~and their families.~~
 4733 (3) When it is determined by the agency department to be
 4734 more cost-effective and in the best interest of the client to

4735 maintain such client in the home of a direct service provider,
 4736 the parent or guardian of the client or, if competent, the
 4737 client may enroll the client in the family care program. The
 4738 direct service provider of a client enrolled in the family care
 4739 program shall be reimbursed according to a rate schedule set by
 4740 the agency ~~department~~. In-home subsidies cited in
 4741 paragraph(1)(d) shall be provided according to s. 393.0695 and
 4742 are not subject to any other payment method or rate schedule
 4743 provided for in this section.

4744 (4) All existing community resources available to the
 4745 client shall be utilized to support program objectives.
 4746 Additional services may be incorporated into the program as
 4747 appropriate and to the extent that resources are available. The
 4748 agency ~~department~~ is authorized to accept gifts and grants in
 4749 order to carry out the program.

4750 (5) The agency ~~department~~ may contract for the provision
 4751 of any portion of the services required by the program, except
 4752 for in-home subsidies cited in paragraph (2)(d) ~~(1)(d)~~, which
 4753 shall be provided pursuant to s. 393.0695. Otherwise, purchase
 4754 of service contracts shall be used whenever the services so
 4755 provided are more cost-efficient than those provided by the
 4756 agency ~~department~~.

4757 (6) When possible, services shall be obtained under the
 4758 "Florida Comprehensive Annual Services Program Plan under Title
 4759 XX of the Social Security Act" and the "Florida Plan for Medical
 4760 Assistance under Title XIX of the Social Security Act."

4761 (7) To provide a range of personal services for the
 4762 client, the use of volunteers shall be maximized. The agency

4763 | ~~department~~ shall assure appropriate insurance coverage to
 4764 | protect volunteers from personal liability while acting within
 4765 | the scope of their volunteer assignments under the program.

4766 | ~~(8) The department shall submit to the President of the~~
 4767 | ~~Senate and the Speaker of the House of Representatives, as part~~
 4768 | ~~of the biennial plan required by s. 393.14, an evaluation report~~
 4769 | ~~summarizing the progress of the family care program. The report~~
 4770 | ~~shall include the information and data necessary for an accurate~~
 4771 | ~~analysis of the costs and benefits associated with the~~
 4772 | ~~establishment and operation of the programs that were~~
 4773 | ~~established.~~

4774 | Section 77. Subsections (1) and (3) of section 393.0695,
 4775 | Florida Statutes, are amended to read:

4776 | 393.0695 Provision of in-home subsidies.--

4777 | (1) The agency may pay ~~department shall develop by October~~
 4778 | ~~1, 1991, a plan for paying~~ in-home subsidies to clients enrolled
 4779 | in the family care program or supported living when it is
 4780 | determined to be more cost-effective and in the best interest of
 4781 | the client to provide a cash supplement to the client's income
 4782 | to enable the client to remain in the family home or the
 4783 | client's own home. Payments may be made to the parent or
 4784 | guardian of the client or, if the client is competent, directly
 4785 | to the client.

4786 | (3) In-home subsidies must be based on an individual
 4787 | determination of need and must not exceed maximum amounts set by
 4788 | the agency ~~department~~ and reassessed by the agency annually
 4789 | ~~department quarterly.~~

4790 Section 78. Subsection (1), paragraph (a) of subsection
 4791 (2), paragraph (a) of subsection(4), paragraphs (a), (d), and
 4792 (h) of subsection (5), paragraph (a) of subsection (6),
 4793 paragraphs (d) and (e) of subsection (8), and subsection (13) of
 4794 section 393.11, Florida Statutes, are amended to read:

4795 393.11 Involuntary admission to residential services.--

4796 (1) JURISDICTION.--When a person is mentally retarded and
 4797 requires involuntary admission to residential services provided
 4798 by the agency ~~developmental services program of the Department~~
 4799 ~~of Children and Family Services~~, the circuit court of the county
 4800 in which the person resides shall have jurisdiction to conduct a
 4801 hearing and enter an order involuntarily admitting the person in
 4802 order that the person may receive the care, treatment,
 4803 habilitation, and rehabilitation which the person needs. For
 4804 the purpose of identifying mental retardation, diagnostic
 4805 capability shall be established by ~~in every program function of~~
 4806 ~~the agency department in the districts, including, but not~~
 4807 ~~limited to, programs provided by children and families;~~
 4808 ~~delinquency services; alcohol, drug abuse, and mental health;~~
 4809 ~~and economic services, and by the Department of Labor and~~
 4810 ~~Employment Security~~. Except as otherwise specified, the
 4811 proceedings under this section shall be governed by the Florida
 4812 Rules of Civil Procedure.

4813 (2) PETITION.--

4814 (a) A petition for involuntary admission to residential
 4815 services may be executed by a petitioning commission. For
 4816 proposed involuntary admission to residential services arising
 4817 out of chapter 916, the petition may be filed by a petitioning

4818 | commission, the agency ~~department~~, the state attorney of the
 4819 | circuit from which the defendant was committed, or the
 4820 | defendant's attorney.

4821 | (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

4822 | (a) Upon receiving the petition, the court shall
 4823 | immediately order the developmental services program of the
 4824 | agency ~~department~~ to examine the person being considered for
 4825 | involuntary admission to residential services.

4826 | (5) EXAMINING COMMITTEE.--

4827 | (a) Upon receiving the petition, the court shall
 4828 | immediately appoint an examining committee to examine the person
 4829 | being considered for involuntary admission to residential
 4830 | services of the developmental services program of the agency
 4831 | ~~department~~.

4832 | (d) Members of the committee shall not be employees of the
 4833 | agency ~~department~~ or be associated with each other in practice
 4834 | or in employer-employee relationships. Members of the committee
 4835 | shall not have served as members of the petitioning commission.
 4836 | Members of the committee shall not be employees of the members
 4837 | of the petitioning commission or be associated in practice with
 4838 | members of the commission.

4839 | (h) The agency ~~department~~ shall develop and prescribe by
 4840 | rule one or more standard forms to be used as a guide for
 4841 | members of the examining committee.

4842 | (6) COUNSEL; GUARDIAN AD LITEM.--

4843 | (a) The person with mental retardation shall be
 4844 | represented by counsel at all stages of the judicial proceeding.
 4845 | In the event the person is indigent and cannot afford counsel,

4846 | the court shall appoint a public defender not less than 20
 4847 | working days before the scheduled hearing. The person's counsel
 4848 | shall have full access to the records of the service provider
 4849 | and the agency ~~department~~. In all cases, the attorney shall
 4850 | represent the rights and legal interests of the person with
 4851 | mental retardation, regardless of who may initiate the
 4852 | proceedings or pay the attorney's fee.

4853 | (8) ORDER.--

4854 | (d) If an order of involuntary admission to residential
 4855 | services provided by the developmental services program of the
 4856 | agency ~~department~~ is entered by the court, a copy of the written
 4857 | order shall be served upon the person, the person's counsel, the
 4858 | agency ~~department~~, and the state attorney and the person's
 4859 | defense counsel, if applicable. The order of involuntary
 4860 | admission sent to the agency ~~department~~ shall also be
 4861 | accompanied by a copy of the examining committee's report and
 4862 | other reports contained in the court file.

4863 | (e) Upon receiving the order, the agency ~~department~~ shall,
 4864 | within 45 days, provide the court with a copy of the person's
 4865 | family or individual support plan and copies of all examinations
 4866 | and evaluations, outlining the treatment and rehabilitative
 4867 | programs. The agency ~~department~~ shall document that the person
 4868 | has been placed in the most appropriate, least restrictive and
 4869 | cost-beneficial residential facility. A copy of the family or
 4870 | individual support plan and other examinations and evaluations
 4871 | shall be served upon the person and the person's counsel at the
 4872 | same time the documents are filed with the court.

4873 (13) HABEAS CORPUS.--At any time and without notice, any
 4874 person involuntarily admitted to the developmental services
 4875 program of the agency department, or the person's parent or
 4876 legal guardian in his or her behalf, is entitled to a writ of
 4877 habeas corpus to question the cause, legality, and
 4878 appropriateness of the person's involuntary admission. Each
 4879 person, or the person's parent or legal guardian, shall receive
 4880 specific written notice of the right to petition for a writ of
 4881 habeas corpus at the time of his or her involuntary placement.

4882 Section 79. Paragraphs (a), (b), and (d) of subsection
 4883 (2), subsection (3), paragraphs(b), (g), (i), and (j) of
 4884 subsection (4), and subsection (6) of section 393.13, Florida
 4885 Statutes, are amended to read:

4886 393.13 Personal treatment of persons who are
 4887 developmentally disabled.--

4888 (2) LEGISLATIVE INTENT.--

4889 (a) The Legislature finds and declares that the system of
 4890 care provided ~~which the state provides~~ to individuals who are
 4891 developmentally disabled must be designed to meet the needs of
 4892 the clients as well as protect the integrity of their legal and
 4893 human rights. ~~Further, the current system of care for persons~~
 4894 ~~who are developmentally disabled is in need of substantial~~
 4895 ~~improvement in order to provide truly meaningful treatment and~~
 4896 ~~habilitation.~~

4897 (b) The Legislature further finds and declares that the
 4898 design and delivery of treatment and services to persons who are
 4899 developmentally disabled should be directed by the principles of
 4900 normalization and therefore should:

- 4901 1. Abate the use of large institutions.
- 4902 2. Continue the development of community-based services
4903 which provide reasonable alternatives to institutionalization in
4904 settings that are least restrictive to the client.
- 4905 3. Provide training and education to individuals who are
4906 developmentally disabled which will maximize their potential to
4907 lead independent and productive lives and which will afford
4908 opportunities for outward mobility from institutions.
- 4909 4. Reduce the use of sheltered workshops and other
4910 noncompetitive employment day activities and promote
4911 opportunities for gainful employment for persons with
4912 developmental disabilities who choose to seek such employment.
- 4913 (d) It is the intent of the Legislature:
- 4914 1. To articulate the existing legal and human rights of
4915 persons who are developmentally disabled so that they may be
4916 exercised and protected. Persons with developmental disabilities
4917 shall have all the rights enjoyed by citizens of the state and
4918 the United States.
- 4919 2. To provide a mechanism for the identification,
4920 evaluation, and treatment of persons with developmental
4921 disabilities.
- 4922 3. To divert those individuals from institutional
4923 commitment who, by virtue of comprehensive assessment, can be
4924 placed in less costly, more effective community environments and
4925 programs.
- 4926 ~~4. To develop a plan which will indicate the most~~
4927 ~~effective and efficient manner in which to implement treatment~~
4928 ~~programs which are meaningful to individuals with developmental~~

4929 | ~~disabilities, while safeguarding and respecting the legal and~~
4930 | ~~human rights of such individuals.~~

4931 | ~~4.5.~~ Once the plan developed under the provisions of
4932 | ~~subparagraph 4.~~ is presented to the Legislature, To fund
4933 | improvements in the program in accordance with the availability
4934 | of state resources and yearly priorities determined by the
4935 | Legislature.

4936 | ~~5.6.~~ To ensure that persons with developmental
4937 | disabilities receive treatment and habilitation which fosters
4938 | the developmental potential of the individual.

4939 | ~~6.7.~~ To provide programs for the proper habilitation and
4940 | treatment of persons with developmental disabilities which shall
4941 | include, but not be limited to, comprehensive medical/dental
4942 | care, education, recreation, specialized therapies, training,
4943 | social services, transportation, guardianship, family care
4944 | programs, day habilitation services, and habilitative and
4945 | rehabilitative services suited to the needs of the individual
4946 | regardless of age, degree of disability, or handicapping
4947 | condition. No person with developmental disabilities shall be
4948 | deprived of these enumerated services by reason of inability to
4949 | pay.

4950 | ~~7.8.~~ To fully effectuate the normalization principle
4951 | through the establishment of community services for persons with
4952 | developmental disabilities as a viable and practical alternative
4953 | to institutional care at each stage of individual life
4954 | development. If care in a residential facility becomes
4955 | necessary, it shall be in the least restrictive setting.

4956 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
 4957 DISABILITIES.--The rights described in this subsection shall
 4958 apply to all persons with developmental disabilities, whether or
 4959 not such persons are clients of the agency ~~department~~.

4960 (a) Persons with developmental disabilities shall have a
 4961 right to dignity, privacy, and humane care, including the right
 4962 to be free from sexual abuse in residential facilities.

4963 (b) Persons with developmental disabilities shall have the
 4964 right to religious freedom and practice. Nothing shall restrict
 4965 or infringe on a person's right to religious preference and
 4966 practice.

4967 (c) Persons with developmental disabilities shall receive
 4968 services, within available sources, which protect the personal
 4969 liberty of the individual and which are provided in the least
 4970 restrictive conditions necessary to achieve the purpose of
 4971 treatment.

4972 (d) Persons who are developmentally disabled shall have a
 4973 right to participate in an appropriate program of quality
 4974 education and training services, within available resources,
 4975 regardless of chronological age or degree of disability. Such
 4976 persons may be provided with instruction in sex education,
 4977 marriage, and family planning.

4978 (e) Persons who are developmentally disabled shall have a
 4979 right to social interaction and to participate in community
 4980 activities.

4981 (f) Persons who are developmentally disabled shall have a
 4982 right to physical exercise and recreational opportunities.

4983 (g) Persons who are developmentally disabled shall have a
 4984 right to be free from harm, including unnecessary physical,
 4985 chemical, or mechanical restraint, isolation, excessive
 4986 medication, abuse, or neglect.

4987 (h) Persons who are developmentally disabled shall have a
 4988 right to consent to or refuse treatment, subject to the
 4989 provisions of s. 393.12(2)(a) or chapter 744.

4990 (i) No otherwise qualified person shall, by reason of
 4991 having a developmental disability, be excluded from
 4992 participation in, or be denied the benefits of, or be subject to
 4993 discrimination under, any program or activity which receives
 4994 public funds, and all prohibitions set forth under any other
 4995 statute shall be actionable under this statute.

4996 (j) No otherwise qualified person shall, by reason of
 4997 having a developmental disability, be denied the right to vote
 4998 in public elections.

4999 (4) CLIENT RIGHTS.--For purposes of this subsection, the
 5000 term "client," as defined in s. 393.063, shall also include any
 5001 person served in a facility licensed pursuant to s. 393.067.

5002 (b) Each client has the right to the possession and use of
 5003 his or her own clothing and personal effects, except in those
 5004 specific instances where the use of some of these items as
 5005 reinforcers is essential for training the client as part of an
 5006 appropriately approved behavioral program. The chief
 5007 administrator of the facility may take temporary custody of such
 5008 effects when it is essential to do so for medical or safety
 5009 reasons. Custody of such personal effects shall be promptly
 5010 recorded in the client's record, and a receipt for such effects

5011 shall be immediately given to the client, if competent, or the
 5012 client's parent or legal guardian.

5013 1. All money belonging to a client held by the agency
 5014 ~~department~~ shall be held in compliance with s. 402.17(2).

5015 2. All interest on money received and held for the
 5016 personal use and benefit of a client shall be the property of
 5017 that client and shall not accrue to the general welfare of all
 5018 clients or be used to defray the cost of residential care.
 5019 Interest so accrued shall be used or conserved for the personal
 5020 use or benefit of the individual client as provided in s.
 5021 402.17(2).

5022 3. Upon the discharge or death of a client, a final
 5023 accounting shall be made of all personal effects and money
 5024 belonging to the client held by the agency ~~department~~. All such
 5025 personal effects and money, including interest, shall be
 5026 promptly turned over to the client or his or her heirs.

5027 (g) No client shall be subjected to a treatment program to
 5028 eliminate bizarre or unusual behaviors without first being
 5029 examined by a physician who in his or her best judgment
 5030 determines that such behaviors are not organically caused.

5031 1. Treatment programs involving the use of noxious or
 5032 painful stimuli shall be prohibited.

5033 2. All alleged violations of this paragraph shall be
 5034 reported immediately to the chief administrative officer of the
 5035 facility or the district administrator, the agency ~~department~~
 5036 head, and the Florida local advocacy council. A thorough
 5037 investigation of each incident shall be conducted and a written
 5038 report of the finding and results of such investigation shall be

5039 submitted to the chief administrative officer of the facility or
 5040 the district administrator and to the agency ~~department~~ head
 5041 within 24 hours of the occurrence or discovery of the incident.

5042 3. The agency ~~department~~ shall adopt ~~promulgate~~ by rule a
 5043 system for the oversight of behavioral programs. Such system
 5044 shall establish guidelines and procedures governing the design,
 5045 approval, implementation, and monitoring of all behavioral
 5046 programs involving clients. The system shall ensure statewide
 5047 and local review by committees of professionals certified as
 5048 behavior analysts pursuant to s. 393.17. No behavioral program
 5049 shall be implemented unless reviewed according to the rules
 5050 established by the agency ~~department~~ under this section.

5051 Nothing stated in this section shall prohibit the review of
 5052 programs by the Florida statewide or local advocacy councils.

5053 (i) Clients shall have the right to be free from
 5054 unnecessary physical, chemical, or mechanical restraint.
 5055 Restraints shall be employed only in emergencies or to protect
 5056 the client from imminent injury to himself or herself or others.
 5057 Restraints shall not be employed as punishment, for the
 5058 convenience of staff, or as a substitute for a habilitative
 5059 plan. Restraints shall impose the least possible restrictions
 5060 consistent with their purpose and shall be removed when the
 5061 emergency ends. Restraints shall not cause physical injury to
 5062 the client and shall be designed to allow the greatest possible
 5063 comfort.

5064 1. Mechanical supports used in normative situations to
 5065 achieve proper body position and balance shall not be considered
 5066 restraints, but shall be prescriptively designed and applied

5067 | under the supervision of a qualified professional with concern
 5068 | for principles of good body alignment, circulation, and
 5069 | allowance for change of position.

5070 | 2. Totally enclosed cribs and barred enclosures shall be
 5071 | considered restraints.

5072 | 3. Daily reports on the employment of physical, chemical,
 5073 | or mechanical restraints by those specialists authorized in the
 5074 | use of such restraints shall be made to the appropriate chief
 5075 | administrator of the facility, and a monthly summary of such
 5076 | reports shall be relayed to the district administrator and the
 5077 | Florida local advocacy council. The reports shall summarize all
 5078 | such cases of restraints, the type used, the duration of usage,
 5079 | and the reasons therefor. Districts shall submit districtwide
 5080 | quarterly reports of these summaries to the state Developmental
 5081 | Disabilities Program Office.

5082 | 4. The agency ~~department~~ shall post a copy of the rules
 5083 | adopted ~~promulgated~~ under this section in each living unit of
 5084 | residential facilities. A copy of the rules adopted ~~promulgated~~
 5085 | under this section shall be given to all staff members of
 5086 | licensed facilities and made a part of all preservice and
 5087 | inservice training programs.

5088 | (j)1. Each client shall have a central record. The record
 5089 | shall include data pertaining to admission and such other
 5090 | information as may be required under rules of the agency
 5091 | ~~department~~.

5092 | 2. Unless waived by the client, if competent, or the
 5093 | client's parent or legal guardian if the client is incompetent,
 5094 | the client's central record shall be confidential and exempt

5095 | from the provisions of s. 119.07(1), and no part of it shall be
 5096 | released except:

5097 | a. The record may be released to physicians, attorneys,
 5098 | and government agencies having need of the record to aid the
 5099 | client, as designated by the client, if competent, or the
 5100 | client's parent or legal guardian, if the client is incompetent.

5101 | b. The record shall be produced in response to a subpoena
 5102 | or released to persons authorized by order of court, excluding
 5103 | matters privileged by other provisions of law.

5104 | c. The record or any part thereof may be disclosed to a
 5105 | qualified researcher, a staff member of the facility, or an
 5106 | employee of the agency ~~department~~ when the administrator of the
 5107 | facility or the director ~~secretary~~ of the agency ~~department~~
 5108 | deems it necessary for the treatment of the client, maintenance
 5109 | of adequate records, compilation of treatment data, or
 5110 | evaluation of programs.

5111 | d. Information from the records may be used for
 5112 | statistical and research purposes if the information is
 5113 | abstracted in such a way to protect the identity of individuals.

5114 | 3. All central records for each client in residential
 5115 | facilities shall be kept on uniform forms distributed by the
 5116 | agency ~~department~~. The central record shall accurately
 5117 | summarize each client's history and present condition.

5118 | 4. The client, if competent, or the client's parent or
 5119 | legal guardian if the client is incompetent, shall be supplied
 5120 | with a copy of the client's central record upon request.

5121 | (6) NOTICE OF RIGHTS.--Each person with developmental
 5122 | disabilities, if competent, or parent or legal guardian of such

5123 person if the person is incompetent, shall promptly receive from
5124 the agency ~~Department of Children and Family Services~~ or the
5125 Department of Education a written copy of this act. Each person
5126 with developmental disabilities able to comprehend shall be
5127 promptly informed, in the language or other mode of
5128 communication which such person understands, of the above legal
5129 rights of persons with developmental disabilities.

5130 Section 80. Section 393.17, Florida Statutes, is amended
5131 to read:

5132 393.17 Behavioral programs; certification of behavior
5133 analysts; ~~fees.~~ --The agency may recognize the certification of
5134 behavior analysts awarded by a nonprofit corporation whose
5135 mission is to meet professional credentialing needs identified
5136 by behavior analysts, state governments, and consumers of
5137 behavior analysis services and whose work has the support of the
5138 Association for Behavior Analysis International. ~~The department~~
5139 ~~shall by rule implement a certification program to ensure that~~
5140 ~~qualified persons oversee the design and implementation of~~
5141 ~~behavioral programs for persons who are developmentally~~
5142 ~~disabled. Certification and recertification minimum standards~~
5143 ~~must comply with departmental rules and must include, for~~
5144 ~~initial certification, examination of competencies in applying~~
5145 ~~behavior analysis with persons who are developmentally disabled~~
5146 ~~within established competency clusters. These competency~~
5147 ~~clusters shall include, but not be limited to, behavioral~~
5148 ~~assessments, observation and recording, behavioral program~~
5149 ~~development and monitoring, and other areas as determined by~~
5150 ~~professional practitioners of behavior analysis. Fees shall be~~

5151 ~~charged for certification not to exceed the cost of development~~
 5152 ~~and administration of the examination and periodic renewal of~~
 5153 ~~certification. The department shall establish by rule the~~
 5154 ~~procedures for certification and certification renewal.~~

5155 Section 81. Section 393.22, Florida Statutes, is amended
 5156 to read:

5157 393.22 ~~Transfer of appropriations; barriers to services;~~
 5158 Financial commitment to community services programs.--

5159 ~~(1) No funds appropriated for developmental services~~
 5160 ~~programs shall be transferred pursuant to s. 216.292, unless~~
 5161 ~~there is a finding by the secretary that treatment programs for~~
 5162 ~~developmental disabilities will not be adversely affected by the~~
 5163 ~~transfer.~~

5164 ~~(2) Development of programs for other disabilities shall~~
 5165 ~~not effectuate a reduction or dilution of the ongoing financial~~
 5166 ~~commitment of the state through appropriations for programs and~~
 5167 ~~services for persons with mental retardation, cerebral palsy,~~
 5168 ~~autism, or spina bifida.~~

5169 ~~(3) In order to The Department of Children and Family~~
 5170 ~~Services and the Agency for Health Care Administration jointly~~
 5171 ~~shall ensure that whenever a number of persons move from an~~
 5172 ~~institution serving persons with developmental disabilities~~
 5173 ~~which is sufficient to allow an entire residential unit within~~
 5174 ~~that institution to be closed, no less than 80 percent of the~~
 5175 ~~direct costs of providing services to persons who had resided in~~
 5176 ~~that unit shall be reallocated for community services.~~

5177 Section 82. Section 393.502, Florida Statutes, is amended
 5178 to read:

5179 | 393.502 Family care councils.--

5180 | (1) CREATION.--There shall be established and located
5181 | within each service area of the agency ~~district of the~~
5182 | ~~department~~ a ~~district~~ family care council.

5183 | (2) MEMBERSHIP.--

5184 | (a) Each local ~~district~~ family care council shall consist
5185 | of at least 10 and no more than 15 members recommended by a
5186 | majority vote of the local ~~district~~ family care council and
5187 | appointed by the Governor.

5188 | (b) At least three of the members of the council must be
5189 | consumers. One such member shall be a consumer who received
5190 | ~~developmental~~ services within the 4 years prior to the date of
5191 | recommendation, or the legal guardian of such a consumer. The
5192 | remainder of the council members shall be parents, guardians, or
5193 | siblings of persons with developmental disabilities who qualify
5194 | for ~~developmental~~ services pursuant to this chapter.

5195 | (c) A person who is currently serving on another board or
5196 | council of the agency ~~department~~ may not be appointed to a local
5197 | ~~district~~ family care council.

5198 | (d) Employees of the agency ~~department~~ are not eligible to
5199 | serve on a local ~~district~~ family care council.

5200 | (e) Persons related by consanguinity or affinity within
5201 | the third degree shall not serve on the same local ~~district~~
5202 | family care council at the same time.

5203 | (f) A chair for the council shall be chosen by the council
5204 | members to serve for 1 year. A person may serve no more than
5205 | four 1-year terms as chair.

5206 | (3) TERMS; VACANCIES.--

5207 (a) Council members shall be appointed for a 3-year term,
 5208 except as provided in subsection (8), and may be reappointed to
 5209 one additional term.

5210 (b) A member who has served two consecutive terms shall
 5211 not be eligible to serve again until 12 months have elapsed
 5212 since ending his or her service on the local ~~district~~ council.

5213 (c) Upon expiration of a term or in the case of any other
 5214 vacancy, the local ~~district~~ council shall, by majority vote,
 5215 recommend to the Governor for appointment a person for each
 5216 vacancy. ~~If the Governor does not act on the council's~~
 5217 ~~recommendations within 45 days after receiving them, the persons~~
 5218 ~~recommended shall be considered to be appointed.~~

5219 (4) COMMITTEE APPOINTMENTS.--The chair of the local
 5220 ~~district~~ family care council may appoint persons to serve on
 5221 council committees. Such persons may include former members of
 5222 the council and persons not eligible to serve on the council.

5223 (5) TRAINING.--

5224 (a) The agency ~~department~~, in consultation with the local
 5225 ~~district~~ councils, shall establish a training program for local
 5226 ~~district~~ family care council members. Each local area ~~district~~
 5227 shall provide the training program when new persons are
 5228 appointed to the local ~~district~~ council and at other times as
 5229 the secretary deems necessary.

5230 (b) The training shall assist the council members to
 5231 understand the laws, rules, and policies applicable to their
 5232 duties and responsibilities.

5233 (c) All persons appointed to a local ~~district~~ council must
 5234 complete this training within 90 days after their appointment. A

5235 | person who fails to meet this requirement shall be considered to
5236 | have resigned from the council.

5237 | (6) MEETINGS.--Council members shall serve on a voluntary
5238 | basis without payment for their services but shall be reimbursed
5239 | for per diem and travel expenses as provided for in s. 112.061.
5240 | The council shall meet at least six times per year.

5241 | (7) PURPOSE.--The purpose of the local ~~district~~ family
5242 | care councils shall be to advise the agency ~~department~~ and its
5243 | ~~district advisory boards~~, to develop a plan for the delivery of
5244 | ~~developmental services~~ family support services within the local
5245 | area ~~district~~, and to monitor the implementation and
5246 | effectiveness of services and support provided under the plan.
5247 | The primary functions of the local ~~district~~ family care councils
5248 | shall be to:

5249 | (a) Assist in providing information and outreach to
5250 | families.

5251 | (b) Review the effectiveness of service ~~developmental~~
5252 | ~~services~~ programs and make recommendations with respect to
5253 | program implementation.

5254 | (c) Advise the agency ~~district developmental services~~
5255 | ~~administrators~~ with respect to policy issues relevant to the
5256 | community and family support system in the local area ~~district~~.

5257 | (d) Meet and share information with other local ~~district~~
5258 | family care councils.

5259 | (8) NEW COUNCILS.--When a local ~~district~~ family care
5260 | council is established for the first time in a local area
5261 | ~~district~~, the Governor shall appoint the first four council
5262 | members, who shall serve 3-year terms. These members shall

5263 submit to the Governor, within 90 days after their appointment,
 5264 recommendations for at least six additional members, selected by
 5265 majority vote. ~~If the Governor does not act on the~~
 5266 ~~recommendations within 45 days after receiving them, the persons~~
 5267 ~~recommended shall be considered to be appointed. Those members~~
 5268 ~~recommended for appointment by the Governor shall serve for 2~~
 5269 ~~years.~~

5270 (9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~ family
 5271 care council may apply for, receive, and accept grants, gifts,
 5272 donations, bequests, and other payments from any public or
 5273 private entity or person. Each local ~~district~~ council is ~~shall~~
 5274 ~~be~~ subject to an annual financial review by ~~district~~ staff
 5275 assigned by the agency ~~district~~ ~~administrator~~. Each local
 5276 ~~district~~ council shall exercise care and prudence in the
 5277 expenditure of funds. The local ~~district~~ family care councils
 5278 shall comply with state expenditure requirements.

5279 Section 83. Section 408.301, Florida Statutes, is amended
 5280 to read:

5281 408.301 Legislative findings.--The Legislature has found
 5282 that access to quality, affordable, health care for all
 5283 Floridians is an important goal for the state. The Legislature
 5284 recognizes that there are Floridians with special health care
 5285 and social needs which require particular attention. The people
 5286 served by the Department of Children and Family Services, the
 5287 Agency for Persons with Disabilities, ~~and~~ the Department of
 5288 Health, and the Department of Elderly Affairs are examples of
 5289 citizens with special needs. The Legislature further recognizes
 5290 that the Medicaid program is an intricate part of the service

5291 delivery system for the special needs citizens ~~served by or~~
 5292 ~~through the Department of Children and Family Services and the~~
 5293 ~~Department of Health.~~ However, the Agency for Health Care
 5294 Administration is not a service provider and does not develop or
 5295 direct programs for the special needs citizens ~~served by or~~
 5296 ~~through the Department of Children and Family Services and the~~
 5297 ~~Department of Health.~~ Therefore, it is the intent of the
 5298 Legislature that the Agency for Health Care Administration work
 5299 closely with the Department of Children and Family Services, the
 5300 Agency for Persons with Disabilities, ~~and~~ the Department of
 5301 Health, and the Department of Elderly Affairs in developing
 5302 plans for assuring access to all Floridians in order to assure
 5303 that the needs of special citizens are met.

5304 Section 84. Section 408.302, Florida Statutes, is amended
 5305 to read:

5306 408.302 Interagency agreement.--

5307 (1) The Agency for Health Care Administration shall enter
 5308 into an interagency agreement with the Department of Children
 5309 and Family Services, the Agency for Persons with Disabilities,
 5310 ~~and~~ the Department of Health, and the Department of Elderly
 5311 Affairs to assure coordination and cooperation in serving
 5312 special needs citizens. The agreement shall include the
 5313 requirement that the secretaries or directors ~~secretary~~ of the
 5314 Department of Children and Family Services, the Agency for
 5315 Persons with Disabilities, ~~and the secretary of~~ the Department
 5316 of Health, and the Department of Elderly Affairs approve, prior
 5317 to adoption, any rule developed by the Agency for Health Care
 5318 Administration where such rule has a direct impact on the

5319 mission of the respective state agencies ~~Department of Children~~
 5320 ~~and Family Services and the Department of Health~~, their
 5321 programs, or their budgets.

5322 (2) For rules which indirectly impact on the mission of
 5323 the Department of Children and Family Services, the Agency for
 5324 Persons with Disabilities, ~~and~~ the Department of Health, and the
 5325 Department of Elderly Affairs, their programs, or their budgets,
 5326 the concurrence of the respective secretaries or directors
 5327 ~~secretary of the Department of Children and Family Services and~~
 5328 ~~the secretary of the Department of Health~~ on the rule is
 5329 required.

5330 (3) For all other rules developed by the Agency for Health
 5331 Care Administration, coordination with the Department of
 5332 Children and Family Services, the Agency for Persons with
 5333 Disabilities, ~~and~~ the Department of Health, and the Department
 5334 of Elderly Affairs is encouraged.

5335 (4) The interagency agreement shall also include any other
 5336 provisions necessary to ensure a continued cooperative working
 5337 relationship between the Agency for Health Care Administration
 5338 and the Department of Children and Family Services, the Agency
 5339 for Persons with Disabilities, ~~and~~ the Department of Health, and
 5340 the Department of Elderly Affairs as each strives to meet the
 5341 needs of the citizens of Florida.

5342 Section 85. Subsection (13) of section 409.906, Florida
 5343 Statutes, is amended to read:

5344 409.906 Optional Medicaid services.--Subject to specific
 5345 appropriations, the agency may make payments for services which
 5346 are optional to the state under Title XIX of the Social Security

5347 Act and are furnished by Medicaid providers to recipients who
 5348 are determined to be eligible on the dates on which the services
 5349 were provided. Any optional service that is provided shall be
 5350 provided only when medically necessary and in accordance with
 5351 state and federal law. Optional services rendered by providers
 5352 in mobile units to Medicaid recipients may be restricted or
 5353 prohibited by the agency. Nothing in this section shall be
 5354 construed to prevent or limit the agency from adjusting fees,
 5355 reimbursement rates, lengths of stay, number of visits, or
 5356 number of services, or making any other adjustments necessary to
 5357 comply with the availability of moneys and any limitations or
 5358 directions provided for in the General Appropriations Act or
 5359 chapter 216. If necessary to safeguard the state's systems of
 5360 providing services to elderly and disabled persons and subject
 5361 to the notice and review provisions of s. 216.177, the Governor
 5362 may direct the Agency for Health Care Administration to amend
 5363 the Medicaid state plan to delete the optional Medicaid service
 5364 known as "Intermediate Care Facilities for the Developmentally
 5365 Disabled." Optional services may include:

5366 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency may
 5367 pay for home-based or community-based services that are rendered
 5368 to a recipient in accordance with a federally approved waiver
 5369 program. The agency may limit or eliminate coverage for certain
 5370 ~~Project AIDS Care Waiver~~ services, preauthorize high-cost or
 5371 highly utilized services, or make any other adjustments
 5372 necessary to comply with any limitations or directions provided
 5373 for in the General Appropriations Act.

5374 Section 86. Sections 393.14, 393.165, 393.166, and
5375 393.505, Florida Statutes, are repealed.

5376 Section 87. (1) Effective October 1, 2004, the
5377 developmental disabilities program and the developmental
5378 services institutions in the Department of Children and Family
5379 Services shall be transferred to the Agency for Persons with
5380 Disabilities by a type two transfer pursuant to s. 20.06,
5381 Florida Statutes. Prior to that date:

5382 (a) The Agency for Persons with Disabilities and the
5383 Department of Children and Family Services, in consultation with
5384 the Department of Management Services, shall determine the
5385 number of positions and resources within the department
5386 dedicated to the developmental disabilities program which shall
5387 be transferred to the agency and will develop an agreement that
5388 delineates who within the Department of Children and Family
5389 Services will provide administrative support to the agency.

5390 (b) The Director of the Agency for Persons with
5391 Disabilities, in consultation with the Secretaries of the
5392 Department of Children and Family Services and the Agency for
5393 Health Care Administration or their designees, shall prepare a
5394 transition plan that must address, at a minimum, building
5395 leases, information support systems, cash ownership and
5396 transfer, administrative support functions, inventory and
5397 transfers of equipment and structures, expenditure transfers,
5398 budget authority and positions, and certifications forward. This
5399 plan shall be submitted by September 1, 2004, to the Executive
5400 Office of the Governor, the President of the Senate, and the
5401 Speaker of the House of Representatives.

5402 (c) The Agency for Persons with Disabilities and the
5403 Department of Children and Family Services shall work with the
5404 Agency for Health Care Administration to develop a plan that
5405 ensures that all of the necessary electronic and paper-based
5406 data of the Developmental Disabilities program is accessible to
5407 the Medicaid program and that all electronic records will be
5408 migrated to a new data system that is compatible with the
5409 Florida Medicaid Management Information System.

5410 (d) The Agency for Persons with Disabilities and the
5411 Agency for Health Care Administration shall develop a plan for
5412 the orderly relocation of the noncentral-office staff of the
5413 Agency for Persons with Disabilities to the area offices of the
5414 Agency for Health Care Administration. Such plan shall include a
5415 schedule that takes into consideration the availability of
5416 space, the expiration of current leases, and the initiation of
5417 new leases that can accommodate the relocated staff, as well as
5418 appropriate reimbursement for collocation costs, including
5419 office space and other operating expenses.

5420 (2) Effective October 1, 2004, the agency shall enter into
5421 an interagency agreement with the Department of Children and
5422 Family Services for the provision of the necessary day-to-day
5423 administrative and operational needs of the agency, including,
5424 but not limited to, personnel, purchasing, information
5425 technology support, legal support, and other related services.
5426 This interagency agreement shall continue until the agency no
5427 longer requires the provision of services through such
5428 agreement.

5429 (3) This act does not affect the validity of any judicial
5430 or administrative proceeding pending on October 30, 2004, and
5431 the Agency for Persons with Disabilities is substituted as a
5432 real party in interest with respect to any proceeding pending on
5433 that date which involves the developmental services programs of
5434 the Department of Children and Family Services.

5435 Section 88. The Office of Program Policy Analysis and
5436 Government Accountability shall identify and evaluate statewide
5437 entities receiving state funding for the purpose of addressing
5438 the interests of, but not directly providing services for,
5439 persons with disabilities.

5440 (1) The purpose of the analysis shall be to provide
5441 information with respect to:

5442 (a) The extent to which activities of these entities are
5443 coordinated;

5444 (b) The similarities and differences in the organizational
5445 missions of these entities; and

5446 (c) The amount of state funds provided to these entities
5447 for the purpose of addressing the interests of persons with
5448 disabilities, the uses of these funds, and whether they
5449 duplicate the efforts of other private or federally funded
5450 entities.

5451 (2) The report shall be completed and provided to the
5452 Governor and Legislature by December 2005.

5453 Section 89. Subsection (1) of section 92.53, Florida
5454 Statutes, is amended to read:

5455 92.53 Videotaping of testimony of victim or witness under
5456 age 16 or person with mental retardation.--

5457 (1) On motion and hearing in camera and a finding that
5458 there is a substantial likelihood that a victim or witness who
5459 is under the age of 16 or who is a person with mental
5460 retardation as defined in s. 393.063~~(42)~~ would suffer at least
5461 moderate emotional or mental harm due to the presence of the
5462 defendant if the child or person with mental retardation is
5463 required to testify in open court, or that such victim or
5464 witness is otherwise unavailable as defined in s. 90.804(1), the
5465 trial court may order the videotaping of the testimony of the
5466 victim or witness in a case, whether civil or criminal in
5467 nature, in which videotaped testimony is to be utilized at trial
5468 in lieu of trial testimony in open court.

5469 Section 90. Subsections (1), (2), and (3), paragraph (i)
5470 of subsection (4), and subsections (5), (8), (9), (10), (11),
5471 (12), (13), (14), and (17) of 393.067, Florida Statutes, are
5472 amended to read:

5473 393.067 Licensure of residential facilities and
5474 comprehensive transitional education programs.--

5475 (1) The agency ~~department~~ shall provide through its
5476 licensing authority a system of provider qualifications,
5477 standards, training criteria for meeting standards, and
5478 monitoring for residential facilities and comprehensive
5479 transitional education programs.

5480 (2) The agency ~~department~~ shall conduct inspections and
5481 reviews of residential facilities and comprehensive transitional
5482 education programs annually.

5483 (3) An application for a license for a residential
5484 facility or a comprehensive transitional education program shall

5485 | be made to the agency ~~Department of Children and Family Services~~
 5486 | on a form furnished by it and shall be accompanied by the
 5487 | appropriate license fee.

5488 | (4) The application shall be under oath and shall contain
 5489 | the following:

5490 | (i) Such other information as the agency ~~department~~
 5491 | determines is necessary to carry out the provisions of this
 5492 | chapter.

5493 | (5) The applicant shall submit evidence which establishes
 5494 | the good moral character of the manager or supervisor of the
 5495 | facility or program and the direct service providers in the
 5496 | facility or program and its component centers or units. A
 5497 | license may be issued if all the screening materials have been
 5498 | timely submitted; however, a license may not be issued or
 5499 | renewed if any of the direct service providers have failed the
 5500 | screening required by s. 393.0655.

5501 | (a)1. A licensed residential facility or comprehensive
 5502 | transitional education program which applies for renewal of its
 5503 | license shall submit to the agency ~~department~~ a list of direct
 5504 | service providers who have worked on a continuous basis at the
 5505 | applicant facility or program since submitting fingerprints to
 5506 | the agency or the Department of Children and Family Services,
 5507 | identifying those direct service providers for whom a written
 5508 | assurance of compliance was provided by the agency or department
 5509 | and identifying those direct service providers who have recently
 5510 | begun working at the facility or program and are awaiting the
 5511 | results of the required fingerprint check along with the date of
 5512 | the submission of those fingerprints for processing. The agency

5513 | ~~department~~ shall by rule determine the frequency of requests to
 5514 | the Department of Law Enforcement to run state criminal records
 5515 | checks for such direct service providers except for those direct
 5516 | service providers awaiting the results of initial fingerprint
 5517 | checks for employment at the applicant facility or program. The
 5518 | agency ~~department~~ shall review the records of the direct service
 5519 | providers at the applicant facility or program with respect to
 5520 | the crimes specified in s. 393.0655 and shall notify the
 5521 | facility or program of its findings. When disposition
 5522 | information is missing on a criminal record, it is ~~shall be~~ the
 5523 | responsibility of the person being screened, upon request of the
 5524 | agency ~~department~~, to obtain and supply within 30 days the
 5525 | missing disposition information to the agency ~~department~~.
 5526 | Failure to supply the missing information within 30 days or to
 5527 | show reasonable efforts to obtain such information shall result
 5528 | in automatic disqualification.

5529 | 2. The applicant shall sign an affidavit under penalty of
 5530 | perjury stating that all new direct service providers have been
 5531 | fingerprinted and that the facility's or program's remaining
 5532 | direct service providers have worked at the applicant facility
 5533 | or program on a continuous basis since being initially screened
 5534 | at that facility or program or have a written assurance of
 5535 | compliance from the agency or department.

5536 | (b) As a prerequisite for issuance of the initial license
 5537 | to a residential facility or comprehensive transitional
 5538 | education program:

5539 | 1. The applicant shall submit to the agency ~~department~~ a
 5540 | complete set of fingerprints, taken by an authorized law

5541 enforcement agency or an employee of the agency ~~department~~ who
5542 is trained to take fingerprints, for the manager, supervisor, or
5543 direct service providers of the facility or program;

5544 2. The agency ~~department~~ shall submit the fingerprints to
5545 the Department of Law Enforcement for state processing and for
5546 federal processing by the Federal Bureau of Investigation; and

5547 3. The agency ~~department~~ shall review the record of the
5548 manager or supervisor with respect to the crimes specified in s.
5549 393.0655(1) and shall notify the applicant of its findings. When
5550 disposition information is missing on a criminal record, it is
5551 ~~shall be~~ the responsibility of the manager or supervisor, upon
5552 request of the agency ~~department~~, to obtain and supply within 30
5553 days the missing disposition information to the agency
5554 ~~department~~. Failure to supply the missing information within 30
5555 days or to show reasonable efforts to obtain such information
5556 shall result in automatic disqualification.

5557 (c) The agency ~~department~~ or a residential facility or
5558 comprehensive transitional education program may not use the
5559 criminal records or juvenile records of a person obtained under
5560 this subsection for any purpose other than determining if that
5561 person meets the minimum standards for good moral character for
5562 a manager or supervisor of, or direct service provider in, such
5563 a facility or program. The criminal records or juvenile records
5564 obtained by the agency ~~department~~ or a residential facility or
5565 comprehensive transitional education program for determining the
5566 moral character of a manager, supervisor, or direct service
5567 provider are exempt from s. 119.07(1).

5568 (8) The agency ~~department~~ shall adopt ~~promulgate~~ rules
 5569 establishing minimum standards for licensure of residential
 5570 facilities and comprehensive transitional education programs,
 5571 including rules requiring facilities and programs to train staff
 5572 to detect and prevent sexual abuse of residents and clients,
 5573 minimum standards of quality and adequacy of care, and uniform
 5574 firesafety standards established by the State Fire Marshal which
 5575 are appropriate to the size of the facility or of the component
 5576 centers or units of the program.

5577 (9) The agency ~~department~~ and the Agency for Health Care
 5578 Administration, after consultation with the Department of
 5579 Community Affairs, shall adopt rules for residential facilities
 5580 under the respective regulatory jurisdiction of each
 5581 establishing minimum standards for the preparation and annual
 5582 update of a comprehensive emergency management plan. At a
 5583 minimum, the rules must provide for plan components that address
 5584 emergency evacuation transportation; adequate sheltering
 5585 arrangements; postdisaster activities, including emergency
 5586 power, food, and water; postdisaster transportation; supplies;
 5587 staffing; emergency equipment; individual identification of
 5588 residents and transfer of records; and responding to family
 5589 inquiries. The comprehensive emergency management plan for all
 5590 comprehensive transitional education programs and for homes
 5591 serving individuals who have complex medical conditions is
 5592 subject to review and approval by the local emergency management
 5593 agency. During its review, the local emergency management agency
 5594 shall ensure that the following agencies, at a minimum, are
 5595 given the opportunity to review the plan: the Agency for Health

5596 Care Administration, the Agency for Persons with Disabilities
 5597 ~~Department of Children and Family Services~~, and the Department
 5598 of Community Affairs. Also, appropriate volunteer organizations
 5599 must be given the opportunity to review the plan. The local
 5600 emergency management agency shall complete its review within 60
 5601 days and either approve the plan or advise the facility of
 5602 necessary revisions.

5603 (10) The agency ~~department~~ may conduct unannounced
 5604 inspections to determine compliance by residential facilities
 5605 and comprehensive transitional education programs with the
 5606 applicable provisions of this chapter and the rules adopted
 5607 pursuant hereto, including the rules adopted for training staff
 5608 of a facility or a program to detect and prevent sexual abuse of
 5609 residents and clients. The facility or program shall make copies
 5610 of inspection reports available to the public upon request.

5611 (11) An alternative living center and an independent
 5612 living education center, as defined in s. 393.063(8), shall be
 5613 subject to the provisions of s. 419.001, except that such
 5614 centers shall be exempt from the 1,000-foot-radius requirement
 5615 of s. 419.001(2) if:

5616 (a) Such centers are located on a site zoned in a manner
 5617 so that all the component centers of a comprehensive transition
 5618 education center may be located thereon; or

5619 (b) There are no more than three such centers within said
 5620 radius of 1,000 feet.

5621 (12) Each residential facility or comprehensive
 5622 transitional education program licensed by the agency ~~department~~
 5623 shall forward annually to the agency ~~department~~ a true and

5624 accurate sworn statement of its costs of providing care to
 5625 clients funded by the agency department.

5626 (13) The agency department may audit the records of any
 5627 residential facility or comprehensive transitional education
 5628 program that ~~which~~ it has reason to believe may not be in full
 5629 compliance with the provisions of this section; provided that,
 5630 any financial audit of such facility or program shall be limited
 5631 to the records of clients funded by the agency department.

5632 (14) The agency department shall establish, for the
 5633 purpose of control of licensure costs, a uniform management
 5634 information system and a uniform reporting system with uniform
 5635 definitions and reporting categories.

5636 (17) The agency department shall not be required to
 5637 contract with new facilities licensed after October 1, 1989,
 5638 pursuant to this chapter. Pursuant to chapter 287, the agency
 5639 ~~department~~ shall continue to contract within available resources
 5640 for residential services with facilities licensed prior to
 5641 October 1, 1989, if such facilities comply with the provisions
 5642 of this chapter and all other applicable laws and regulations.

5643 Section 91. Subsection (9) of section 397.405, Florida
 5644 Statutes, is amended to read:

5645 397.405 Exemptions from licensure.--The following are
 5646 exempt from the licensing provisions of this chapter:

5647 (9) Facilities licensed under s. 393.063~~(8)~~ that, in
 5648 addition to providing services to persons who are
 5649 developmentally disabled as defined therein, also provide
 5650 services to persons developmentally at risk as a consequence of

5651 exposure to alcohol or other legal or illegal drugs while in
 5652 utero.

5653
 5654 The exemptions from licensure in this section do not apply to
 5655 any service provider that receives an appropriation, grant, or
 5656 contract from the state to operate as a service provider as
 5657 defined in this chapter or to any substance abuse program
 5658 regulated pursuant to s. 397.406. Furthermore, this chapter may
 5659 not be construed to limit the practice of a physician licensed
 5660 under chapter 458 or chapter 459, a psychologist licensed under
 5661 chapter 490, or a psychotherapist licensed under chapter 491 who
 5662 provides substance abuse treatment, so long as the physician,
 5663 psychologist, or psychotherapist does not represent to the
 5664 public that he or she is a licensed service provider and does
 5665 not provide services to clients pursuant to part V of this
 5666 chapter. Failure to comply with any requirement necessary to
 5667 maintain an exempt status under this section is a misdemeanor of
 5668 the first degree, punishable as provided in s. 775.082 or s.
 5669 775.083.

5670 Section 92. Paragraph (b) of subsection (5) of section
 5671 400.464, Florida Statutes, is amended to read:

5672 400.464 Home health agencies to be licensed; expiration of
 5673 license; exemptions; unlawful acts; penalties.--

5674 (5) The following are exempt from the licensure
 5675 requirements of this part:

5676 (b) Home health services provided by a state agency,
 5677 either directly or through a contractor with:

- 5678 1. The Department of Elderly Affairs.

5679 2. The Department of Health, a community health center, or
 5680 a rural health network that furnishes home visits for the
 5681 purpose of providing environmental assessments, case management,
 5682 health education, personal care services, family planning, or
 5683 followup treatment, or for the purpose of monitoring and
 5684 tracking disease.

5685 3. Services provided to persons who have developmental
 5686 disabilities, as defined in s. 393.063~~(12)~~.

5687 4. Companion and sitter organizations that were registered
 5688 under s. 400.509(1) on January 1, 1999, and were authorized to
 5689 provide personal services under s. 393.063(33) under a
 5690 developmental services provider certificate on January 1, 1999,
 5691 may continue to provide such services to past, present, and
 5692 future clients of the organization who need such services,
 5693 notwithstanding the provisions of this act.

5694 5. The Department of Children and Family Services.

5695 Section 93. Paragraph (d) of subsection (1) of section
 5696 419.001, Florida Statutes, is amended to read:

5697 419.001 Site selection of community residential homes.--

5698 (1) For the purposes of this section, the following
 5699 definitions shall apply:

5700 (d) "Resident" means any of the following: a frail elder
 5701 as defined in s. 400.618; a physically disabled or handicapped
 5702 person as defined in s. 760.22(7)(a); a developmentally disabled
 5703 person as defined in s. 393.063~~(12)~~; a nondangerous mentally ill
 5704 person as defined in s. 394.455(18); or a child as defined in s.
 5705 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

5706 Section 94. Section 914.16, Florida Statutes, is amended
 5707 to read:

5708 914.16 Child abuse and sexual abuse of victims under age
 5709 16 or persons with mental retardation; limits on
 5710 interviews.--The chief judge of each judicial circuit, after
 5711 consultation with the state attorney and the public defender for
 5712 the judicial circuit, the appropriate chief law enforcement
 5713 officer, and any other person deemed appropriate by the chief
 5714 judge, shall provide by order reasonable limits on the number of
 5715 interviews that a victim of a violation of s. 794.011, s.
 5716 800.04, or s. 827.03 who is under 16 years of age or a victim of
 5717 a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102
 5718 who is a person with mental retardation as defined in s.
 5719 393.063~~(42)~~ must submit to for law enforcement or discovery
 5720 purposes. The order shall, to the extent possible, protect the
 5721 victim from the psychological damage of repeated interrogations
 5722 while preserving the rights of the public, the victim, and the
 5723 person charged with the violation.

5724 Section 95. Subsection (2) of section 914.17, Florida
 5725 Statutes, is amended to read:

5726 914.17 Appointment of advocate for victims or witnesses
 5727 who are minors or persons with mental retardation.--

5728 (2) An advocate shall be appointed by the court to
 5729 represent a person with mental retardation as defined in s.
 5730 393.063~~(42)~~ in any criminal proceeding if the person with mental
 5731 retardation is a victim of or witness to abuse or neglect, or if
 5732 the person with mental retardation is a victim of a sexual
 5733 offense or a witness to a sexual offense committed against a

5734 | minor or person with mental retardation. The court may appoint
5735 | an advocate in any other criminal proceeding in which a person
5736 | with mental retardation is involved as either a victim or a
5737 | witness. The advocate shall have full access to all evidence and
5738 | reports introduced during the proceedings, may interview
5739 | witnesses, may make recommendations to the court, shall be
5740 | noticed and have the right to appear on behalf of the person
5741 | with mental retardation at all proceedings, and may request
5742 | additional examinations by medical doctors, psychiatrists, or
5743 | psychologists. It is the duty of the advocate to perform the
5744 | following services:

5745 | (a) To explain, in language understandable to the person
5746 | with mental retardation, all legal proceedings in which the
5747 | person shall be involved;

5748 | (b) To act, as a friend of the court, to advise the judge,
5749 | whenever appropriate, of the person with mental retardation's
5750 | ability to understand and cooperate with any court proceedings;
5751 | and

5752 | (c) To assist the person with mental retardation and the
5753 | person's family in coping with the emotional effects of the
5754 | crime and subsequent criminal proceedings in which the person
5755 | with mental retardation is involved.

5756 | Section 96. Subsection (1) of section 918.16, Florida
5757 | Statutes, is amended to read:

5758 | 918.16 Sex offenses; testimony of person under age 16 or
5759 | person with mental retardation; testimony of victim; courtroom
5760 | cleared; exceptions.--

5761 (1) Except as provided in subsection (2), in the trial of
 5762 any case, civil or criminal, when any person under the age of 16
 5763 or any person with mental retardation as defined in s.
 5764 393.063~~(42)~~ is testifying concerning any sex offense, the court
 5765 shall clear the courtroom of all persons except parties to the
 5766 cause and their immediate families or guardians, attorneys and
 5767 their secretaries, officers of the court, jurors, newspaper
 5768 reporters or broadcasters, court reporters, and, at the request
 5769 of the victim, victim or witness advocates designated by the
 5770 state attorney's office.

5771 Section 97. Paragraph (a) of subsection (4) of section
 5772 943.0585, Florida Statutes, is amended to read:

5773 943.0585 Court-ordered expunction of criminal history
 5774 records.--The courts of this state have jurisdiction over their
 5775 own procedures, including the maintenance, expunction, and
 5776 correction of judicial records containing criminal history
 5777 information to the extent such procedures are not inconsistent
 5778 with the conditions, responsibilities, and duties established by
 5779 this section. Any court of competent jurisdiction may order a
 5780 criminal justice agency to expunge the criminal history record
 5781 of a minor or an adult who complies with the requirements of
 5782 this section. The court shall not order a criminal justice
 5783 agency to expunge a criminal history record until the person
 5784 seeking to expunge a criminal history record has applied for and
 5785 received a certificate of eligibility for expunction pursuant to
 5786 subsection (2). A criminal history record that relates to a
 5787 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
 5788 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.

5789 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in
5790 s. 907.041 may not be expunged, without regard to whether
5791 adjudication was withheld, if the defendant was found guilty of
5792 or pled guilty or nolo contendere to the offense, or if the
5793 defendant, as a minor, was found to have committed, or pled
5794 guilty or nolo contendere to committing, the offense as a
5795 delinquent act. The court may only order expunction of a
5796 criminal history record pertaining to one arrest or one incident
5797 of alleged criminal activity, except as provided in this
5798 section. The court may, at its sole discretion, order the
5799 expunction of a criminal history record pertaining to more than
5800 one arrest if the additional arrests directly relate to the
5801 original arrest. If the court intends to order the expunction of
5802 records pertaining to such additional arrests, such intent must
5803 be specified in the order. A criminal justice agency may not
5804 expunge any record pertaining to such additional arrests if the
5805 order to expunge does not articulate the intention of the court
5806 to expunge a record pertaining to more than one arrest. This
5807 section does not prevent the court from ordering the expunction
5808 of only a portion of a criminal history record pertaining to one
5809 arrest or one incident of alleged criminal activity.
5810 Notwithstanding any law to the contrary, a criminal justice
5811 agency may comply with laws, court orders, and official requests
5812 of other jurisdictions relating to expunction, correction, or
5813 confidential handling of criminal history records or information
5814 derived therefrom. This section does not confer any right to the
5815 expunction of any criminal history record, and any request for

5816 | expunction of a criminal history record may be denied at the
 5817 | sole discretion of the court.

5818 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 5819 | criminal history record of a minor or an adult which is ordered
 5820 | expunged by a court of competent jurisdiction pursuant to this
 5821 | section must be physically destroyed or obliterated by any
 5822 | criminal justice agency having custody of such record; except
 5823 | that any criminal history record in the custody of the
 5824 | department must be retained in all cases. A criminal history
 5825 | record ordered expunged that is retained by the department is
 5826 | confidential and exempt from the provisions of s. 119.07(1) and
 5827 | s. 24(a), Art. I of the State Constitution and not available to
 5828 | any person or entity except upon order of a court of competent
 5829 | jurisdiction. A criminal justice agency may retain a notation
 5830 | indicating compliance with an order to expunge.

5831 | (a) The person who is the subject of a criminal history
 5832 | record that is expunged under this section or under other
 5833 | provisions of law, including former s. 893.14, former s. 901.33,
 5834 | and former s. 943.058, may lawfully deny or fail to acknowledge
 5835 | the arrests covered by the expunged record, except when the
 5836 | subject of the record:

- 5837 | 1. Is a candidate for employment with a criminal justice
 5838 | agency;
- 5839 | 2. Is a defendant in a criminal prosecution;
- 5840 | 3. Concurrently or subsequently petitions for relief under
 5841 | this section or s. 943.059;
- 5842 | 4. Is a candidate for admission to The Florida Bar;

5843 | 5. Is seeking to be employed or licensed by or to contract
 5844 | with the Department of Children and Family Services or the
 5845 | Department of Juvenile Justice or to be employed or used by such
 5846 | contractor or licensee in a sensitive position having direct
 5847 | contact with children, the developmentally disabled, the aged,
 5848 | or the elderly as provided in s. 110.1127(3), s. 393.063~~(15)~~, s.
 5849 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 5850 | 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

5851 | 6. Is seeking to be employed or licensed by the Office of
 5852 | Teacher Education, Certification, Staff Development, and
 5853 | Professional Practices of the Department of Education, any
 5854 | district school board, or any local governmental entity that
 5855 | licenses child care facilities.

5856 | Section 98. Paragraph (a) of subsection (4) of section
 5857 | 943.059, Florida Statutes, is amended to read:

5858 | 943.059 Court-ordered sealing of criminal history
 5859 | records.--The courts of this state shall continue to have
 5860 | jurisdiction over their own procedures, including the
 5861 | maintenance, sealing, and correction of judicial records
 5862 | containing criminal history information to the extent such
 5863 | procedures are not inconsistent with the conditions,
 5864 | responsibilities, and duties established by this section. Any
 5865 | court of competent jurisdiction may order a criminal justice
 5866 | agency to seal the criminal history record of a minor or an
 5867 | adult who complies with the requirements of this section. The
 5868 | court shall not order a criminal justice agency to seal a
 5869 | criminal history record until the person seeking to seal a
 5870 | criminal history record has applied for and received a

5871 certificate of eligibility for sealing pursuant to subsection
5872 (2). A criminal history record that relates to a violation of s.
5873 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
5874 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
5875 847.0145, s. 893.135, or a violation enumerated in s. 907.041
5876 may not be sealed, without regard to whether adjudication was
5877 withheld, if the defendant was found guilty of or pled guilty or
5878 nolo contendere to the offense, or if the defendant, as a minor,
5879 was found to have committed or pled guilty or nolo contendere to
5880 committing the offense as a delinquent act. The court may only
5881 order sealing of a criminal history record pertaining to one
5882 arrest or one incident of alleged criminal activity, except as
5883 provided in this section. The court may, at its sole discretion,
5884 order the sealing of a criminal history record pertaining to
5885 more than one arrest if the additional arrests directly relate
5886 to the original arrest. If the court intends to order the
5887 sealing of records pertaining to such additional arrests, such
5888 intent must be specified in the order. A criminal justice agency
5889 may not seal any record pertaining to such additional arrests if
5890 the order to seal does not articulate the intention of the court
5891 to seal records pertaining to more than one arrest. This section
5892 does not prevent the court from ordering the sealing of only a
5893 portion of a criminal history record pertaining to one arrest or
5894 one incident of alleged criminal activity. Notwithstanding any
5895 law to the contrary, a criminal justice agency may comply with
5896 laws, court orders, and official requests of other jurisdictions
5897 relating to sealing, correction, or confidential handling of
5898 criminal history records or information derived therefrom. This

5899 | section does not confer any right to the sealing of any criminal
 5900 | history record, and any request for sealing a criminal history
 5901 | record may be denied at the sole discretion of the court.

5902 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 5903 | history record of a minor or an adult which is ordered sealed by
 5904 | a court of competent jurisdiction pursuant to this section is
 5905 | confidential and exempt from the provisions of s. 119.07(1) and
 5906 | s. 24(a), Art. I of the State Constitution and is available only
 5907 | to the person who is the subject of the record, to the subject's
 5908 | attorney, to criminal justice agencies for their respective
 5909 | criminal justice purposes, or to those entities set forth in
 5910 | subparagraphs (a)1., 4., 5., and 6. for their respective
 5911 | licensing and employment purposes.

5912 | (a) The subject of a criminal history record sealed under
 5913 | this section or under other provisions of law, including former
 5914 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 5915 | deny or fail to acknowledge the arrests covered by the sealed
 5916 | record, except when the subject of the record:

- 5917 | 1. Is a candidate for employment with a criminal justice
 5918 | agency;
- 5919 | 2. Is a defendant in a criminal prosecution;
- 5920 | 3. Concurrently or subsequently petitions for relief under
 5921 | this section or s. 943.0585;
- 5922 | 4. Is a candidate for admission to The Florida Bar;
- 5923 | 5. Is seeking to be employed or licensed by or to contract
 5924 | with the Department of Children and Family Services or the
 5925 | Department of Juvenile Justice or to be employed or used by such
 5926 | contractor or licensee in a sensitive position having direct

5927 | contact with children, the developmentally disabled, the aged,
 5928 | or the elderly as provided in s. 110.1127(3), s. 393.063~~(15)~~, s.
 5929 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 5930 | 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
 5931 | 400; or

5932 | 6. Is seeking to be employed or licensed by the Office of
 5933 | Teacher Education, Certification, Staff Development, and
 5934 | Professional Practices of the Department of Education, any
 5935 | district school board, or any local governmental entity which
 5936 | licenses child care facilities.

5937 | Section 99. Subsections (3) and (4) of section 393.0641,
 5938 | Florida Statutes, are amended to read:

5939 | 393.0641 Program for the prevention and treatment of
 5940 | severe self-injurious behavior.--

5941 | (3) The agency ~~department~~ may contract for the provision
 5942 | of any portion or all of the services required by the program.

5943 | (4) The agency has ~~department shall have~~ the authority to
 5944 | license this program and shall adopt ~~promulgate~~ rules to
 5945 | implement the program.

5946 | Section 100. Section 393.065, Florida Statutes, is amended
 5947 | to read:

5948 | 393.065 Application and eligibility determination.--

5949 | (1) Application for services shall be made in writing to
 5950 | the agency ~~Department of Children and Family Services~~, in the
 5951 | district in which the applicant resides. Employees of the
 5952 | agency's ~~department's~~ developmental services program shall
 5953 | review each applicant for eligibility within 45 days after the
 5954 | date the application is signed for children under 6 years of age

5955 | and within 60 days after the date the application is signed for
 5956 | all other applicants. When necessary to definitively identify
 5957 | individual conditions or needs, the agency ~~department~~ shall
 5958 | provide a comprehensive assessment. Only individuals whose
 5959 | domicile is in Florida are ~~shall be~~ eligible for services.
 5960 | Information accumulated by other agencies, including
 5961 | professional reports and collateral data, shall be considered in
 5962 | this process when available.

5963 | (2) In order to provide immediate services or crisis
 5964 | intervention to applicants, the agency ~~department~~ shall arrange
 5965 | for emergency eligibility determination, with a full eligibility
 5966 | review to be accomplished within 45 days of the emergency
 5967 | eligibility determination.

5968 | (3) The agency ~~department~~ shall notify each applicant, in
 5969 | writing, of its eligibility decision. Any applicant determined
 5970 | by the agency ~~department~~ to be ineligible for developmental
 5971 | services has ~~shall have~~ the right to appeal this decision
 5972 | pursuant to ss. 120.569 and 120.57.

5973 | (4) The agency ~~department~~ shall assess the level of need
 5974 | and medical necessity for prospective residents of intermediate-
 5975 | care facilities for the developmentally disabled after October
 5976 | 1, 1999. The agency ~~department~~ may enter into an agreement with
 5977 | the Department of Elderly Affairs for its Comprehensive
 5978 | Assessment and Review for Long-Term-Care Services (CARES)
 5979 | program to conduct assessments to determine the level of need
 5980 | and medical necessity for long-term-care services under this
 5981 | chapter. To the extent permissible under federal law, the

5982 assessments must be funded under Title XIX of the Social
5983 Security Act.

5984 Section 101. Section 393.0651, Florida Statutes, is
5985 amended to read:

5986 393.0651 Family or individual support plan.--The agency
5987 ~~department~~ shall provide for an appropriate family support plan
5988 for children ages birth to 18 years of age and an individual
5989 support plan for each client. The parent or guardian of the
5990 client or, if competent, the client, or, when appropriate, the
5991 client advocate, shall be consulted in the development of the
5992 plan and shall receive a copy of the plan. Each plan shall
5993 include the most appropriate, least restrictive, and most cost-
5994 beneficial environment for accomplishment of the objectives for
5995 client progress and a specification of all services authorized.
5996 The plan shall include provisions for the most appropriate level
5997 of care for the client. Within the specification of needs and
5998 services for each client, when residential care is necessary,
5999 the agency ~~department~~ shall move toward placement of clients in
6000 residential facilities based within the client's community. The
6001 ultimate goal of each plan, whenever possible, shall be to
6002 enable the client to live a dignified life in the least
6003 restrictive setting, be that in the home or in the community.
6004 For children under 6 years of age, the family support plan shall
6005 be developed within the 45-day application period as specified
6006 in s. 393.065(1); for all applicants 6 years of age or older,
6007 the family or individual support plan shall be developed within
6008 the 60-day period as specified in that subsection.

6009 (1) The agency ~~department~~ shall develop and specify by
 6010 rule the core components of support plans to be used by each
 6011 district.

6012 (2)(a) The family or individual support plan shall be
 6013 integrated with the individual education plan (IEP) for all
 6014 clients who are public school students entitled to a free
 6015 appropriate public education under the Individuals with
 6016 Disabilities Education Act, I.D.E.A., as amended. The family or
 6017 individual support plan and IEP shall be implemented to maximize
 6018 the attainment of educational and habilitation goals. If the IEP
 6019 for a student enrolled in a public school program indicates
 6020 placement in a public or private residential program is
 6021 necessary to provide special education and related services to a
 6022 client, the local education agency shall provide for the costs
 6023 of that service in accordance with the requirements of the
 6024 Individuals with Disabilities Education Act, I.D.E.A., as
 6025 amended. This shall not preclude local education agencies and
 6026 the agency ~~department~~ from sharing the residential service costs
 6027 of students who are clients and require residential placement.
 6028 Under no circumstances shall clients entitled to a public
 6029 education or their parents be assessed a fee by the agency
 6030 ~~department~~ under s. 402.33 for placement in a residential
 6031 program.

6032 (b) For clients who are entering or exiting the school
 6033 system, an interdepartmental staffing team composed of
 6034 representatives of the agency ~~department~~ and the local school
 6035 system shall develop a written transitional living and training

6036 | plan with the participation of the client or with the parent or
 6037 | guardian of the client, or the client advocate, as appropriate.

6038 | (3) Each family or individual support plan shall be
 6039 | facilitated through case management designed solely to advance
 6040 | the individual needs of the client.

6041 | (4) In the development of the family or individual support
 6042 | plan, a client advocate may be appointed by the support planning
 6043 | team for a client who is a minor or for a client who is not
 6044 | capable of express and informed consent when:

6045 | (a) The parent or guardian cannot be identified;

6046 | (b) The whereabouts of the parent or guardian cannot be
 6047 | discovered; or

6048 | (c) The state is the only legal representative of the
 6049 | client.

6050 |
 6051 | Such appointment shall not be construed to extend the powers of
 6052 | the client advocate to include any of those powers delegated by
 6053 | law to a legal guardian.

6054 | (5) The agency ~~department~~ shall place a client in the most
 6055 | appropriate and least restrictive, and cost-beneficial,
 6056 | residential facility according to his or her individual
 6057 | habilitation plan. The parent or guardian of the client or, if
 6058 | competent, the client, or, when appropriate, the client
 6059 | advocate, and the administrator of the residential facility to
 6060 | which placement is proposed shall be consulted in determining
 6061 | the appropriate placement for the client. Considerations for
 6062 | placement shall be made in the following order:

6063 (a) Client's own home or the home of a family member or
 6064 direct service provider.

6065 (b) Foster care facility.

6066 (c) Group home facility.

6067 (d) Intermediate care facility for the developmentally
 6068 disabled.

6069 (e) Other facilities licensed by the agency ~~department~~
 6070 which offer special programs for people with developmental
 6071 disabilities.

6072 (f) Developmental services institution.

6073 (6) In developing a client's annual family or individual
 6074 support plan, the individual or family with the assistance of
 6075 the support planning team shall identify measurable objectives
 6076 for client progress and shall specify a time period expected for
 6077 achievement of each objective.

6078 (7) The individual, family, and support coordinator shall
 6079 review progress in achieving the objectives specified in each
 6080 client's family or individual support plan, and shall revise the
 6081 plan annually, following consultation with the client, if
 6082 competent, or with the parent or guardian of the client, or,
 6083 when appropriate, the client advocate. The agency ~~department~~
 6084 shall annually report in writing to the client, if competent, or
 6085 to the parent or guardian of the client, or to the client
 6086 advocate, when appropriate, with respect to the client's
 6087 habilitative and medical progress.

6088 (8) Any client, or any parent of a minor client, or
 6089 guardian, authorized guardian advocate, or client advocate for a
 6090 client, who is substantially affected by the client's initial

6091 family or individual support plan, or the annual review thereof,
 6092 shall have the right to file a notice to challenge the decision
 6093 pursuant to ss. 120.569 and 120.57. Notice of such right to
 6094 appeal shall be included in all support plans provided by the
 6095 agency department.

6096 Section 102. Section 393.0673, Florida Statutes, is
 6097 amended to read:

6098 393.0673 Denial, suspension, revocation of license;
 6099 moratorium on admissions; administrative fines; procedures.--

6100 (1) The agency ~~Department of Children and Family Services~~
 6101 may deny, revoke, or suspend a license or impose an
 6102 administrative fine, not to exceed \$1,000 per violation per day,
 6103 for a violation of any provision of s. 393.0655 or s. 393.067 or
 6104 rules adopted pursuant thereto. All hearings shall be held
 6105 within the county in which the licensee or applicant operates or
 6106 applies for a license to operate a facility as defined herein.

6107 (2) The agency ~~department~~, as a part of any final order
 6108 issued by it under the provisions of this chapter, may impose
 6109 such fine as it deems proper, except that such fine may not
 6110 exceed \$1,000 for each violation. Each day a violation of this
 6111 chapter occurs constitutes a separate violation and is subject
 6112 to a separate fine, but in no event may the aggregate amount of
 6113 any fine exceed \$10,000. Fines paid by any facility licensee
 6114 under the provisions of this subsection shall be deposited in
 6115 the Resident Protection Trust Fund and expended as provided in
 6116 s. 400.063.

6117 (3) The agency ~~department~~ may issue an order immediately
 6118 suspending or revoking a license when it determines that any

6119 | condition in the facility presents a danger to the health,
 6120 | safety, or welfare of the residents in the facility.

6121 | (4) The agency ~~department~~ may impose an immediate
 6122 | moratorium on admissions to any facility when the department
 6123 | determines that any condition in the facility presents a threat
 6124 | to the health, safety, or welfare of the residents in the
 6125 | facility.

6126 | Section 103. Subsections (1) and (3) of section 393.0675,
 6127 | Florida Statutes, are amended to read:

6128 | 393.0675 Injunctive proceedings authorized.--

6129 | (1) The agency ~~Department of Children and Family Services~~
 6130 | may institute injunctive proceedings in a court of competent
 6131 | jurisdiction to:

6132 | (a) Enforce the provisions of this chapter or any minimum
 6133 | standard, rule, regulation, or order issued or entered pursuant
 6134 | thereto; or

6135 | (b) Terminate the operation of facilities licensed
 6136 | pursuant to this chapter when any of the following conditions
 6137 | exist:

6138 | 1. Failure by the facility to take preventive or
 6139 | corrective measures in accordance with any order of the agency
 6140 | ~~department~~.

6141 | 2. Failure by the facility to abide by any final order of
 6142 | the agency ~~department~~ once it has become effective and binding.

6143 | 3. Any violation by the facility constituting an emergency
 6144 | requiring immediate action as provided in s. 393.0673.

6145 | (3) The agency ~~department~~ may institute proceedings for an
 6146 | injunction in a court of competent jurisdiction to terminate the

6147 | operation of a provider of supports or services if such provider
 6148 | has willfully and knowingly refused to comply with the screening
 6149 | requirement for direct service providers or has refused to
 6150 | terminate direct service providers found not to be in compliance
 6151 | with the requirements for good moral character.

6152 | Section 104. Subsection (1), paragraphs (b), (c), and (d)
 6153 | of subsection (2), and paragraph(e) of subsection (3) of section
 6154 | 393.0678, Florida Statutes, are amended to read:

6155 | 393.0678 Receivership proceedings.--

6156 | (1) The agency ~~department~~ may petition a court of
 6157 | competent jurisdiction for the appointment of a receiver for an
 6158 | intermediate care facility for the developmentally disabled, a
 6159 | residential habilitation center, or a group home facility owned
 6160 | and operated by a corporation or partnership when any of the
 6161 | following conditions exist:

6162 | (a) Any person is operating a facility without a license
 6163 | and refuses to make application for a license as required by s.
 6164 | 393.067 or, in the case of an intermediate care facility for the
 6165 | developmentally disabled, as required by ss. 393.067 and
 6166 | 400.062.

6167 | (b) The licensee is closing the facility or has informed
 6168 | the department that it intends to close the facility; and
 6169 | adequate arrangements have not been made for relocation of the
 6170 | residents within 7 days, exclusive of weekends and holidays, of
 6171 | the closing of the facility.

6172 | (c) The agency ~~department~~ determines that conditions exist
 6173 | in the facility which present an imminent danger to the health,
 6174 | safety, or welfare of the residents of the facility or which

6175 | present a substantial probability that death or serious physical
6176 | harm would result therefrom. Whenever possible, the agency
6177 | ~~department~~ shall facilitate the continued operation of the
6178 | program.

6179 | (d) The licensee cannot meet its financial obligations to
6180 | provide food, shelter, care, and utilities. Evidence such as the
6181 | issuance of bad checks or the accumulation of delinquent bills
6182 | for such items as personnel salaries, food, drugs, or utilities
6183 | constitutes prima facie evidence that the ownership of the
6184 | facility lacks the financial ability to operate the home in
6185 | accordance with the requirements of this chapter and all rules
6186 | promulgated thereunder.

6187 | (2)

6188 | (b) A hearing shall be conducted within 5 days of the
6189 | filing of the petition, at which time all interested parties
6190 | shall have the opportunity to present evidence pertaining to the
6191 | petition. The agency ~~department~~ shall notify the owner or
6192 | operator of the facility named in the petition of its filing and
6193 | the date set for the hearing.

6194 | (c) The court shall grant the petition only upon finding
6195 | that the health, safety, or welfare of residents of the facility
6196 | would be threatened if a condition existing at the time the
6197 | petition was filed is permitted to continue. A receiver may not
6198 | be appointed ex parte unless the court determines that one or
6199 | more of the conditions in subsection (1) exist; that the
6200 | facility owner or operator cannot be found; that all reasonable
6201 | means of locating the owner or operator and notifying him or her
6202 | of the petition and hearing have been exhausted; or that the

6203 owner or operator after notification of the hearing chooses not
6204 to attend. After such findings, the court may appoint any person
6205 qualified by education, training, or experience to carry out the
6206 responsibilities of receiver pursuant to this section, except
6207 that the court may not appoint any owner or affiliate of the
6208 facility which is in receivership. Before the appointment as
6209 receiver of a person who is the operator, manager, or supervisor
6210 of another facility, the court shall determine that the person
6211 can reasonably operate, manage, or supervise more than one
6212 facility. The receiver may be appointed for up to 90 days with
6213 the option of petitioning the court for 30-day extensions. The
6214 receiver may be selected from a list of persons qualified to act
6215 as receivers developed by the agency department and presented to
6216 the court with each petition for receivership. Under no
6217 circumstances may the agency department or designated agency
6218 ~~departmental~~ employee be appointed as a receiver for more than
6219 60 days; however, the agency departmental receiver may petition
6220 the court for 30-day extensions. The court shall grant an
6221 extension upon a showing of good cause. The agency department
6222 may petition the court to appoint a substitute receiver.

6223 (d) During the first 60 days of the receivership, the
6224 agency department may not take action to decertify or revoke the
6225 license of a facility unless conditions causing imminent danger
6226 to the health and welfare of the residents exist and a receiver
6227 has been unable to remove those conditions. After the first 60
6228 days of receivership, and every 60 days thereafter until the
6229 receivership is terminated, the agency department shall submit
6230 to the court the results of an assessment of the ability of the

6231 facility to assure the safety and care of the residents. If the
 6232 conditions at the facility or the intentions of the owner
 6233 indicate that the purpose of the receivership is to close the
 6234 facility rather than to facilitate its continued operation, the
 6235 agency ~~department~~ shall place the residents in appropriate
 6236 alternate residential settings as quickly as possible. If, in
 6237 the opinion of the court, the agency ~~department~~ has not been
 6238 diligent in its efforts to make adequate arrangements for
 6239 placement, the court shall find the agency ~~department~~ to be in
 6240 contempt and shall order the agency ~~department~~ to submit its
 6241 plans for moving the residents.

6242 (3) The receiver shall make provisions for the continued
 6243 health, safety, and welfare of all residents of the facility
 6244 and:

6245 (e) May use the building, fixtures, furnishings, and any
 6246 accompanying consumable goods in the provision of care and
 6247 services to residents and to any other persons receiving
 6248 services from the facility at the time the petition for
 6249 receivership was filed. The receiver shall collect payments for
 6250 all goods and services provided to residents or others during
 6251 the period of the receivership at the same rate of payment
 6252 charged by the owner at the time the petition for receivership
 6253 was filed, or at a fair and reasonable rate otherwise approved
 6254 by the court for private, paying residents. The receiver may
 6255 apply to the agency ~~department~~ for a rate increase for residents
 6256 under Title XIX of the Social Security Act if the facility is
 6257 not receiving the state reimbursement cap and if expenditures
 6258 justify an increase in the rate.

6259 Section 105. Section 393.071, Florida Statutes, is amended
 6260 to read:

6261 393.071 Client fees.--The agency ~~Department of Children~~
 6262 ~~and Family Services~~ shall charge fees for services provided to
 6263 clients in accordance with s. 402.33.

6264 Section 106. Subsection (2) of section 393.075, Florida
 6265 Statutes, is amended to read:

6266 393.075 General liability coverage.--

6267 (2) The Division of Risk Management of the Department of
 6268 Financial Services shall provide coverage through the agency
 6269 ~~Department of Children and Family Services~~ to any person who
 6270 owns or operates a foster care facility or group home facility
 6271 solely for the agency ~~Department of Children and Family~~
 6272 ~~Services~~, who cares for children placed by developmental
 6273 services staff of the agency ~~department~~, and who is licensed
 6274 pursuant to s. 393.067 to provide such supervision and care in
 6275 his or her place of residence. The coverage shall be provided
 6276 from the general liability account of the State Risk Management
 6277 Trust Fund. The coverage is limited to general liability claims
 6278 arising from the provision of supervision and care of children
 6279 in a foster care facility or group home facility pursuant to an
 6280 agreement with the agency ~~department~~ and pursuant to guidelines
 6281 established through policy, rule, or statute. Coverage shall be
 6282 subject to the limits provided in ss. 284.38 and 284.385, and
 6283 the exclusions set forth therein, together with other exclusions
 6284 as may be set forth in the certificate of coverage issued by the
 6285 trust fund. A person covered under the general liability account
 6286 pursuant to this subsection shall immediately notify the

6287 Division of Risk Management of the Department of Financial
 6288 Services of any potential or actual claim.

6289 Section 107. Section 393.115, Florida Statutes, is amended
 6290 to read:

6291 393.115 Discharge.--

6292 (1) DISCHARGE AT THE AGE OF MAJORITY.--

6293 (a) When any residential client reaches his or her 18th
 6294 birthday, the agency ~~department~~ shall give the resident or legal
 6295 guardian the option to continue residential services or to be
 6296 discharged from residential services.

6297 (b) If the resident appears to meet the criteria for
 6298 involuntary admission to residential services, as defined in s.
 6299 393.11, the agency ~~department~~ shall file a petition to determine
 6300 the appropriateness of continued residential placement on an
 6301 involuntary basis. The agency ~~department~~ shall file the petition
 6302 for involuntary admission in the county in which the client
 6303 resides. If the resident was originally involuntarily admitted
 6304 to residential services pursuant to s. 393.11, then the agency
 6305 ~~department~~ shall file the petition in the court having
 6306 continuing jurisdiction over the case.

6307 (c) Nothing in this section shall in any way limit or
 6308 restrict the resident's right to a writ of habeas corpus or the
 6309 right of the agency ~~department~~ to transfer a resident receiving
 6310 residential care to a program of appropriate services provided
 6311 by the agency ~~department~~ when such program is the appropriate
 6312 habilitative setting for the resident.

6313 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE COMMITMENT.--Any
 6314 person with developmental disabilities committed to the custody

6315 of the agency department pursuant to the provisions of the
 6316 applicable criminal or juvenile court law shall be discharged in
 6317 accordance with the requirements of the applicable criminal or
 6318 juvenile court law.

6319 Section 108. Subsection (3) of section 393.12, Florida
 6320 Statutes, is amended to read:

6321 393.12 Capacity; appointment of guardian advocate.--

6322 (3) COURT COSTS.--In all proceedings under this section,
 6323 no court costs shall be charged against the agency department.

6324 Section 109. Section 393.125, Florida Statutes, is amended
 6325 to read:

6326 393.125 Hearing rights.--

6327 (1) REVIEW OF AGENCY DEPARTMENT DECISIONS.--

6328 (a) Any developmental services applicant or client, or his
 6329 or her parent, guardian, guardian advocate, or authorized
 6330 representative, who has any substantial interest determined by
 6331 the agency department, has ~~shall have~~ the right to request an
 6332 administrative hearing pursuant to ss. 120.569 and 120.57.

6333 (b) Notice of the right to an administrative hearing shall
 6334 be given, both verbally and in writing, to the applicant or
 6335 client, and his or her parent, guardian, guardian advocate, or
 6336 authorized representative, at the same time that the agency
 6337 ~~department~~ gives the applicant or client notice of the agency's
 6338 ~~department's~~ action. The notice shall be given, both verbally
 6339 and in writing, in the language of the client or applicant and
 6340 in English.

6341 (c) A request for a hearing under this section shall be
 6342 made to the agency ~~department~~, in writing, within 30 days of the
 6343 applicant's or client's receipt of the notice.

6344 (2) REVIEW OF PROVIDER DECISIONS.--The agency ~~department~~
 6345 shall adopt ~~promulgate~~ rules to establish uniform guidelines for
 6346 the agency ~~department~~ and service providers relevant to
 6347 termination, suspension, or reduction of client services by the
 6348 service provider. The rules shall ensure the due process rights
 6349 of service providers and clients.

6350 Section 110. Subsections (3), (4), (5), and (6) of section
 6351 393.15, Florida Statutes, are amended to read:

6352 393.15 Legislative intent; Community Resources Development
 6353 Trust Fund.--

6354 (3) There is created a Community Resources Development
 6355 Trust Fund in the State Treasury to be used by the agency
 6356 ~~Department of Children and Family Services~~ for the purpose of
 6357 granting loans to eligible programs for the initial costs of
 6358 development of the programs. Loans shall be made only to those
 6359 facilities which are in compliance with the zoning regulations
 6360 of the local community. Costs of development may include
 6361 structural modification, the purchase of equipment and fire and
 6362 safety devices, preoperational staff training, and the purchase
 6363 of insurance. Such costs shall not include the actual
 6364 construction of a facility.

6365 (4) The agency ~~department~~ may grant to an eligible program
 6366 a lump-sum loan in one payment not to exceed the cost to the
 6367 program of providing 2 months' services, care, or maintenance to
 6368 each person who is developmentally disabled to be placed in the

6369 | program by the agency department, or the actual cost of
6370 | firesafety renovations to a facility required by the state,
6371 | whichever is greater. Loans granted to programs shall not be in
6372 | lieu of payment for maintenance, services, or care provided, but
6373 | shall stand separate and distinct. The agency department shall
6374 | adopt promulgate rules, as provided in chapter 120, to determine
6375 | the standards under which a program shall be eligible to receive
6376 | a loan as provided in this section and criteria for the
6377 | equitable allocation of loan trust funds when eligible
6378 | applications exceed the funds available.

6379 | (5) Any loan granted by the agency department under this
6380 | section shall be repaid by the program within 5 years. A
6381 | program that ~~which~~ operates as a nonprofit corporation meeting
6382 | the requirements of s. 501(c)(3) of the Internal Revenue Code,
6383 | and that ~~which~~ seeks forgiveness of its loan shall submit to the
6384 | agency department a statement setting forth the service it has
6385 | provided during the year together with such other information as
6386 | the agency department by rule shall require, and, upon approval
6387 | of each such annual statement, the agency department shall
6388 | forgive 20 percent of the principal of any such loan granted
6389 | after June 30, 1975.

6390 | (6) If any program that ~~which~~ has received a loan under
6391 | this section ceases to accept, or provide care, services, or
6392 | maintenance to persons placed in the program by the department,
6393 | or if such program files ~~shall file~~ papers of bankruptcy, at
6394 | that point in time the loan shall become an interest-bearing
6395 | loan at the rate of 5 percent per annum on the entire amount of
6396 | the initial loan which shall be repaid within a 1-year period

6397 | from the date on which the program ceases to provide care,
6398 | services, or maintenance, or files papers in bankruptcy, and the
6399 | amount of the loan due plus interest shall constitute a lien in
6400 | favor of the state against all real and personal property of the
6401 | program. The lien shall be perfected by the appropriate officer
6402 | of the agency ~~department~~ by executing and acknowledging a
6403 | statement of the name of the program and the amount due on the
6404 | loan and a copy of the promissory note, which shall be recorded
6405 | by the agency ~~department~~ with the clerk of the circuit court in
6406 | the county wherein the program is located. If the program has
6407 | filed a petition for bankruptcy, the agency ~~department~~ shall
6408 | file and enforce the lien in the bankruptcy proceedings.
6409 | Otherwise, the lien shall be enforced in the manner provided in
6410 | s. 85.011. All funds received by the agency ~~department~~ from the
6411 | enforcement of the lien shall be deposited in the Community
6412 | Resources Development Trust Fund.

6413 | Section 111. Subsection (1) of section 393.501, Florida
6414 | Statutes, is amended to read:

6415 | 393.501 Rulemaking.--

6416 | (1) The agency ~~department~~ shall adopt rules to carry out
6417 | the provisions of this chapter.

6418 | Section 112. Section 393.503, Florida Statutes, is amended
6419 | to read:

6420 | 393.503 Respite and family care subsidy expenditures;
6421 | funding.--The agency ~~Department of Children and Family Services~~
6422 | shall determine the amount of expenditures per fiscal year for
6423 | the respite and family care subsidy to families and individuals
6424 | with developmental disabilities living in their own homes. This

6425 information shall be made available to the family care councils
6426 and to others requesting the information. The family care
6427 councils shall review the expenditures and make recommendations
6428 to the agency ~~department~~ with respect to any new funds that are
6429 made available for family care.

6430 Section 113. Subsection (2) of section 393.506, Florida
6431 Statutes, is amended to read:

6432 393.506 Administration of medication.--

6433 (2) Each facility, institution, or program must include in
6434 its policies and procedures a plan for training designated staff
6435 to ensure the safe handling, storage, and administration of
6436 prescription medication. These policies and procedures must be
6437 approved by the agency ~~department~~ before unlicensed direct care
6438 services staff assist with medication.

6439 Section 114. (1) In the Department of Children and Family
6440 Services' Economic Self-Sufficiency Services program, the
6441 department may provide its eligibility determination functions
6442 either with department staff or through contract with at least
6443 two private vendors, with the following restrictions:

6444 (a) With the exception of information technology, no
6445 contract shall be for a geographic area larger than a combined
6446 seven districts or combined three zones without the prior
6447 approval of the Legislative Budget Commission; and

6448 (b) Department employees must provide the functions in at
6449 least one area of the state if their proposed cost is
6450 competitive with private vendors.

6451 (2) This section shall take effect upon this act becoming
6452 a law.

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6453 | Section 115. Except as otherwise expressly provided in
6454 | this act, this act shall take effect July 1, 2004.