

By Senator Fasano

11-1169A-05

1 A bill to be entitled
2 An act relating to the licensure of health care
3 providers; designating parts I, II, III, and IV
4 of chapter 408, F.S.; creating ss.
5 408.801-408.819, F.S., the Health Care
6 Licensing Procedures Act; providing legislative
7 findings with respect to the standardization of
8 basic licensing requirements for health care
9 providers; providing for applicability;
10 providing definitions; providing requirements
11 for licensure; providing for license fees;
12 providing requirements for license
13 applications; providing requirements for change
14 of ownership of a provider; providing license
15 categories; providing requirements for
16 background screening; authorizing the Agency
17 for Health Care Administration to make
18 inspections; prohibiting certain unlicensed
19 activities; providing for administrative fines;
20 authorizing the agency to impose moratoriums
21 and suspensions; providing for license denial
22 and revocation; authorizing the agency to
23 institute injunction proceedings; providing for
24 administrative proceedings; providing for
25 deposit of fees and fines into the Health Care
26 Trust Fund; authorizing the agency to adopt
27 rules; amending s. 112.0455, F.S., relating to
28 the Drug-Free Workplace Act; providing for
29 applicability of part II of ch. 408, F.S.;
30 deleting duplicative provisions governing
31 background screening and license fees; amending

1 ss. 383.301, 383.305, 383.309, 383.315,
2 383.324, 383.33, and 383.335, F.S., and
3 repealing ss. 383.304, 383.325, 383.331, and
4 383.332, F.S., relating to birth centers;
5 conforming licensure requirements; deleting
6 duplicative provisions governing license
7 applications and fees, background screening,
8 inspections, and enforcement; amending ss.
9 390.011, 390.012, 390.014, and 390.018, F.S.,
10 and repealing s. 390.013, 390.015, 390.016,
11 390.017, 390.019, and 390.021, F.S., relating
12 to abortion clinics; conforming licensure
13 requirements; deleting duplicative provisions
14 governing license applications and fees,
15 background screening, inspections, and
16 enforcement; amending s. 394.455, F.S.;
17 redefining the term "hospital" for purposes of
18 the Florida Mental Health Act; amending s.
19 394.67, F.S.; defining the term "short-term
20 residential treatment facility" for purposes of
21 the Community Substance Abuse and Mental Health
22 Services Act; amending ss. 394.875, 394.877,
23 394.878, 394.879, 394.90, and 394.907, F.S.,
24 and repealing s. 394.876 and 394.902, F.S.;
25 conforming licensure requirements; deleting
26 duplicative provisions governing license
27 applications and fees, background screening,
28 inspections, and enforcement; amending ss.
29 395.003, 395.004, 395.0161, 395.0163, 395.0193,
30 395.0199, 395.1046, 395.1055, 395.1065,
31 395.10973, and 395.10974, F.S., and repealing

1 ss. 395.002(4), 395.0055, and 395.0162, F.S.,
2 relating to hospital licensing and regulation;
3 conforming licensure requirements; deleting
4 duplicative provisions governing license
5 applications and fees, background screening,
6 inspections, and enforcement; amending ss.
7 400.022, 400.051, 400.062, 400.063, 400.071,
8 400.102, 400.111, 400.1183, 400.121, 400.141,
9 400.179, 400.18, 400.19, 400.191, 400.20, and
10 400.23, F.S., and repealing ss. 400.021(5) and
11 (20), 400.0712(3), 400.125, and 400.241(1) and
12 (2), F.S., relating to nursing homes;
13 conforming cross-references; conforming
14 licensure requirements; deleting duplicative
15 provisions governing license applications and
16 fees, background screening, inspections, and
17 enforcement; revising requirements for posting
18 reports and records; amending ss. 400.402,
19 400.407, 400.4075, 400.408, 400.411, 400.412,
20 400.414, 400.417, 400.4174, 400.4176, 400.418,
21 400.419, 400.423, 400.424, 400.4255, 400.4256,
22 400.427, 400.4275, 400.431, 400.434, 400.441,
23 400.442, 400.444, 400.452, and 400.454, F.S.,
24 and repealing ss. 400.415, 400.4178(7),
25 400.421, 400.435(1), 400.447(1), (2), and (3),
26 and 400.451, F.S., relating to assisted living
27 facilities; conforming licensure requirements;
28 deleting duplicative provisions governing
29 license applications and fees, background
30 screening, inspections, and enforcement;
31 amending ss. 400.464, 400.471, 400.474,

1 400.484, 400.487, 400.494, 400.495, 400.497,
2 400.506, 400.509, and 400.512, F.S., and
3 repealing s. 400.515, F.S., relating to home
4 health agencies and nurse registries;
5 conforming licensure requirements; deleting
6 duplicative provisions governing license
7 applications and fees, background screening,
8 inspections, and enforcement; clarifying the
9 authority of physician's assistants and
10 advanced registered nurse practitioners;
11 requiring that a nurse registry provide certain
12 information; amending ss. 400.551, 400.554,
13 400.555, 400.556, 400.5565, 400.557, 400.5572,
14 400.559, 400.56, and 400.562, F.S., and
15 repealing ss. 400.5575, 400.558, and 400.564,
16 F.S., relating to adult day care centers;
17 conforming licensure requirements; deleting
18 duplicative provisions governing license
19 applications and fees, background screening,
20 inspections, and enforcement; amending ss.
21 400.602, 400.605, 400.606, 400.6065, 400.607,
22 and 400.6095, F.S., relating to hospices;
23 conforming licensure requirements; deleting
24 duplicative provisions governing license
25 applications and fees, background screening,
26 inspections, and enforcement; amending ss.
27 400.617, 400.619, 400.6194, 400.6196, 400.621,
28 400.6211, and 400.625, F.S., and repealing s.
29 400.622, F.S., relating to adult family-care
30 homes; conforming licensure requirements;
31 deleting duplicative provisions governing

1 license applications and fees, inspections, and
2 enforcement; amending ss. 400.801 and 400.805,
3 F.S., relating to homes for special services
4 and transitional living facilities; conforming
5 licensure requirements; deleting duplicative
6 provisions governing license applications and
7 fees, background screening, inspections, and
8 enforcement; amending ss. 400.902, 400.903,
9 400.905, 400.907, 400.908, 400.912, 400.914,
10 and 400.915, F.S., and repealing ss. 400.906,
11 400.910, 400.911, 400.913, 400.916, and
12 400.917, F.S., relating to prescribed pediatric
13 extended care centers; conforming licensure
14 requirements; deleting duplicative provisions
15 governing license applications and fees,
16 inspections, and enforcement; amending ss.
17 400.925, 400.93, 400.931, 400.932, 400.933, and
18 400.935, F.S., and repealing ss. 400.95,
19 400.953(2), 400.955(4), and 400.956, F.S.,
20 relating to home medical equipment providers;
21 conforming licensure requirements; deleting
22 duplicative provisions governing license
23 applications and fees, background screening,
24 inspections, and enforcement; amending ss.
25 400.960, 400.962, 400.967, 400.968, 400.9685,
26 and 400.969, F.S., and repealing ss. 400.963
27 and 400.965, F.S., relating to intermediate
28 care facilities for the developmentally
29 disabled; conforming licensure requirements;
30 deleting duplicative provisions governing
31 license applications and fees, background

1 screening, inspections, and enforcement;
2 amending s. 440.980, F.S., relating to health
3 care service pools; conforming licensure
4 requirements; deleting duplicative provisions
5 governing license applications and fees,
6 background screening, inspections, and
7 enforcement; amending ss. 400.991, 400.9915,
8 400.9925, 400.993, 400.9935, and 400.995, F.S.,
9 and repealing ss. 400.992, 400.994, and
10 400.9945, F.S., relating to health care
11 clinics; conforming licensure requirements;
12 deleting duplicative provisions governing
13 license applications and fees, background
14 screening, inspections, and enforcement;
15 amending s. 408.831, F.S., relating to the
16 licensure of health care facilities; providing
17 for application to affiliated business
18 entities; correcting cross-references; amending
19 s. 440.102, F.S.; revising requirements for
20 drug-testing laboratories to conform to changes
21 made by the act; amending ss. 483.035, 483.051,
22 483.061, 483.091, 483.101, 483.111, 483.172,
23 483.201, 483.221, and 483.23, F.S., and
24 repealing ss. 483.131 and 483.25, F.S.,
25 relating to clinical laboratories; conforming
26 licensure requirements; deleting duplicative
27 provisions governing license applications and
28 fees, background screening, inspections, and
29 enforcement; amending ss. 483.291, 483.294,
30 483.30, 483.302, and 483.32, F.S., and
31 repealing ss. 483.311, 483.317(1), 483.322(1),

1 and 483.328, F.S., relating to multiphasic
2 health testing centers; conforming licensure
3 requirements; deleting duplicative provisions
4 governing license applications and fees,
5 background screening, inspections, and
6 enforcement; amending ss. 765.541, 765.542, and
7 765.544, F.S., relating to entities engaged in
8 organ and tissue procurement; conforming
9 licensure requirements; deleting duplicative
10 provisions governing license applications and
11 fees, inspections, and enforcement; providing
12 for part II of ch. 408, F.S., to prevail in
13 cases of conflict with other specified
14 provisions; providing for the transfer of rules
15 adopted by the Department of Elderly Affairs
16 pursuant to parts III, V, VI, and VII of ch.
17 400 to be transferred to the Agency for Health
18 Care Administration; authorizing the agency to
19 issue licenses for less than a 2-year period
20 until a specified date; providing an effective
21 date.

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

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

1 and 408.7071, is created and entitled "HEALTH FACILITY AND
2 SERVICES PLANNING."

3 Section 2. Part II of chapter 408, Florida Statutes,
4 consisting of sections 408.801, 408.802, 408.803, 408.804,
5 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
6 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
7 and 408.819, as created by the act, and s. 408.831, is created
8 and entitled "HEALTH CARE LICENSING: GENERAL PROVISIONS."

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

13 Section 4. Part IV of chapter 408, Florida Statutes,
14 consisting of sections 408.911, 408.913, 408.914, 408.915,
15 408.916, 408.917, and 408.918, is created and entitled "HEALTH
16 AND HUMAN SERVICES ELIGIBILITY ACCESS SYSTEM."

17 Section 5. Sections 408.801, 408.802, 408.803,
18 408.804, 408.805, 408.806, 408.807, 408.808, 408.809, 408.810,
19 408.811, 408.812, 408.813, 408.814, 408.815, 408.816, 408.817,
20 408.818, and 408.819, Florida Statutes, are created to read:

21 408.801 Short title; purpose.--

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

24 (2) The Legislature finds that there is unnecessary
25 duplication and variation in the requirements for licensure by
26 the Agency for Health Care Administration, brought about by
27 the historical pattern of legislative action focused
28 exclusively on a single type of regulated provider. It is the
29 intent of the Legislature to provide a streamlined and
30 consistent set of basic licensing requirements for all such
31 providers in order to minimize confusion, standardize

1 terminology, and include issues that are otherwise not
2 adequately addressed in the statutes pertaining to specific
3 providers.

4 408.802 Applicability.--The provisions of this part
5 apply to the provision of services that necessitate licensure
6 as defined in this part and to the following entities licensed
7 or registered by the Agency for Health Care Administration, as
8 further described in chapters 112, 383, 390, 394, 395, 400,
9 440, 483, and 765:

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

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

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

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

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

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

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

23 (8) Hospitals, as provided under part I of chapter
24 395.

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

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

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

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- 1 (12) Health care risk managers, as provided under part
2 I of chapter 395.
- 3 (13) Nursing homes, as provided under part II of
4 chapter 400.
- 5 (14) Assisted living facilities, as provided under
6 part III of chapter 400.
- 7 (15) Home health agencies, as provided under part IV
8 of chapter 400.
- 9 (16) Nurse registries, as provided under part IV of
10 chapter 400.
- 11 (17) Companion services or homemaker services
12 providers, as provided under part IV of chapter 400.
- 13 (18) Adult day care centers, as provided under part V
14 of chapter 400.
- 15 (19) Hospices, as provided under part VI of chapter
16 400.
- 17 (20) Adult family-care homes, as provided under part
18 VII of chapter 400.
- 19 (21) Homes for special services, as provided under
20 part VIII of chapter 400.
- 21 (22) Transitional living facilities, as provided under
22 part VIII of chapter 400.
- 23 (23) Prescribed pediatric extended care centers, as
24 provided under part IX of chapter 400.
- 25 (24) Home medical equipment providers, as provided
26 under part X of chapter 400.
- 27 (25) Intermediate care facilities for the
28 developmentally disabled, as provided under part XI of chapter
29 400.
- 30 (26) Health care services pools, as provided under
31 part XII of chapter 400.

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

3 (28) Clinical laboratories, as provided under part I
4 of chapter 483.

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

7 (30) Organ and tissue procurement agencies, as
8 provided under chapter 765.

9 408.803 Definitions.--As used in this part, the term:

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

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

15 (3) "Authorizing statute" means the statute
16 authorizing the licensed operation of a provider listed in s.
17 408.802, including chapters 112, 383, 390, 394, 395, 400, 440,
18 483, and 765.

19 (4) "Certification" means certification as a Medicare
20 or Medicaid provider of the services that necessitate
21 licensure or certification pursuant to the federal Clinical
22 Laboratory Improvement Amendments.

23 (5) "Change in ownership" means an event in which the
24 licensee changes to a different legal entity or in which 45
25 percent or more of the ownership, voting shares, or
26 controlling interest in a corporation whose shares are not
27 publicly traded on a recognized stock exchange is transferred
28 or assigned, including the final transfer or assignment of
29 multiple transfers or assignments over a 2-year period which
30 cumulatively total 45 percent or greater. However, a change
31 solely in the management company is not a change of ownership.

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

3 (7) "Controlling interest" means:

4 (a) The applicant or licensee;

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

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

13
14 The term does not include a voluntary board member.

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

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

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

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

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

30 (13) "Voluntary board member" means a board member of
31 a not-for-profit corporation or organization who serves solely

1 in a voluntary capacity, does not receive any remuneration for
2 his or her services on the board of directors, and has no
3 financial interest in the corporation or organization. The
4 agency shall recognize a person as a voluntary board member
5 following submission of a statement to the agency by the board
6 member and the not-for-profit corporation or organization
7 which affirms that the board member complies with this
8 definition. The statement affirming the status of the board
9 member must be submitted to the agency on a form provided by
10 the agency.

11 408.804 License required; display.--

12 (1) A person or entity may not provide services that
13 necessitate licensure, or operate or maintain a provider
14 offering or providing services that necessitate licensure,
15 without first obtaining from the agency a license authorizing
16 such operation.

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

24 408.805 Fees required; adjustments.--Unless otherwise
25 limited by authorizing statutes, license fees must be
26 reasonably calculated by the agency to cover its costs in
27 carrying out its responsibilities under this part, authorizing
28 statutes, and applicable rules, including the cost of
29 licensure, inspection, and regulation of providers.

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

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

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

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

10 (5) Fees are nonrefundable.

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

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

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

20 408.806 License application process.--

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

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

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

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

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

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

6 (e) The following information regarding the location
7 of the provider for which application is made:

8 1. A report or letter from the zoning authority
9 indicating that the location is zoned appropriately for its
10 use. If the provider is a community residential home under
11 chapter 419, the zoning requirement must be satisfied by proof
12 of compliance with chapter 419.

13 2. A satisfactory fire safety report from the local
14 authority having jurisdiction or the State Fire Marshal.

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

18 (g) If the applicant offers continuing care agreements
19 as defined in chapter 651, proof that the applicant has
20 obtained a certificate of authority as required for operation
21 under chapter 651.

22 (h) Other information that the agency finds is
23 necessary to determine the ability of the applicant to carry
24 out its responsibilities under this part, authorizing
25 statutes, and applicable rules, including satisfactory
26 inspection results.

27 (2)(a) The applicant for a renewal license must submit
28 an application that must be received by the agency at least 60
29 days before the expiration of the current license.

30 (b) The applicant for initial licensure due to a
31 change of ownership must submit an application that must be

1 received by the agency at least 60 days before the date of
2 change of ownership.

3 (c) For any other application or request, the
4 applicant must submit an application or request that must be
5 received by the agency at least 60 days before the requested
6 effective date, unless otherwise specified in authorizing
7 statutes or rules.

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

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

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

26 (c) Within 60 days after the receipt of a complete
27 application, the agency shall approve or deny the application.

28 (4)(a) Licensees subject to the provisions of this
29 part shall be biennial licenses unless conditions of the
30 license category specify a shorter license period.

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

8 (5) In accordance with authorizing statutes and
9 applicable rules, proof of compliance with s. 408.810 must be
10 submitted with an application for licensure.

11 (6) The agency may not issue an initial license to a
12 health care provider subject to the certificate-of-need
13 provisions in part I of this chapter if the licensee has not
14 been issued a certificate of need or certificate-of-need
15 exemption, when applicable. Failure to apply for the renewal
16 of a license before the expiration date renders the license
17 null and void and the former licensee may not be issued a new
18 license unless the licensee reapplies for an initial license
19 and meets all current qualifications for licensure, including
20 construction standards for facilities where applicable and
21 complies with certificate-of-need requirements if the
22 applicant is subject to the provisions of part I of this
23 chapter.

24 (7)(a) An applicant must demonstrate compliance with
25 the requirements in this part, authorizing statutes, and
26 applicable rules during an inspection pursuant to s. 408.811,
27 as required by authorizing statutes.

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

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

6 (d) If a provider is not available when an inspection
7 is attempted, the application shall be denied.

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

11 (a) Licensure applications.

12 (b) Required signatures.

13 (c) Payment of fees.

14 (d) Notarization of applications.

15 (9) Requirements for electronic submission of any
16 documents required by this part or authorizing statutes may be
17 established by rule.

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

20 (1) The transferor must notify the agency in writing
21 at least 60 days before the anticipated date of the change of
22 ownership.

23 (2) The transferee shall make application to the
24 agency for a license within the timeframes required in s.
25 408.806.

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

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

31

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

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

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

10 (a) All client records.

11 (b) Inspection reports.

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

14 408.808 License categories.--

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

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

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

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

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

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

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

27 408.809 Background screening; prohibited offenses.--

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

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

1 has not yet received background screening results from the
2 Federal Bureau of Investigation. A standard license may be
3 granted to the licensee upon the agency's receipt of a report
4 of the results of the Federal Bureau of Investigation
5 background screening for each individual required by this
6 section to undergo background screening which confirms that
7 all standards have been met, or upon the granting of an
8 exemption from disqualification by the agency as set forth in
9 chapter 435.

10 (4) When a change of any person required to be
11 screened under this section occurs, the licensee must notify
12 the agency of the change within the time period specified in
13 the authorizing statute or rules and must submit to the agency
14 information necessary to conduct level 2 screening or provide
15 evidence of compliance with background screening requirements
16 of this section. The person may serve in his or her capacity
17 pending the agency's receipt of the report from the Federal
18 Bureau of Investigation if he or she has met the standards for
19 the Department of Law Enforcement background check. However,
20 the person may not continue to serve if the report indicates
21 any violation of background screening standards unless an
22 exemption from disqualification has been granted by the agency
23 as set forth in chapter 435.

24 (5) Background screening is not required in order to
25 obtain a certificate of exemption issued under s. 483.106.

26 408.810 Minimum licensure requirements.--In addition
27 to the licensure requirements specified in this part,
28 authorizing statutes, and applicable rules, each applicant and
29 licensee must comply with the requirements of this section in
30 order to obtain and maintain a license.

31

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

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

8 (3) Unless otherwise specified in this part,
9 authorizing statutes, or applicable rules, any information
10 required to be reported to the agency must be submitted within
11 10 calendar days after the report period or effective date of
12 the information.

13 (4) Whenever a licensee discontinues operation of a
14 provider:

15 (a) The licensee must inform the agency not less than
16 30 days prior to the discontinuance of operation and inform
17 clients of discharge as required by authorizing statutes.
18 Immediately upon discontinuance of operation of a provider,
19 the licensee shall surrender the license to the agency and the
20 license shall be canceled.

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

27 1. Make arrangements to forward records for each
28 client to one of the following, based upon the client's
29 choice: the client or the client's legal representative, the
30 client's attending physician, or the health care provider
31 where the client currently receives services; or

1 2. Cause a notice to be published in the newspaper of
2 greatest general circulation in the county where the provider
3 was located which advises clients of the discontinuance of the
4 provider operation. The notice must inform clients that they
5 may obtain copies of their records and specify the name,
6 address, and telephone number of the person from whom the
7 copies of records may be obtained. The notice must appear at
8 least once a week for 4 consecutive weeks. Failure to comply
9 with this subparagraph is a misdemeanor of the second degree,
10 punishable as provided in s. 775.082 or s. 775.083.

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

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

20 2. Abusive, neglectful, or exploitative practices. The
21 statewide toll-free telephone number for the central abuse
22 hotline must be provided to clients in a manner that is
23 clearly legible and must include the words: "To report abuse,
24 neglect, or exploitation, please call toll-free (phone
25 number)." The agency shall publish a minimum of a 90-day
26 advance notice of a change in the toll-free telephone numbers.

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

29 (6) An applicant must provide the agency with proof of
30 the applicant's legal right to occupy the property before a
31 license may be issued. Proof may include, but need not be

1 limited to, copies of warranty deeds, lease or rental
2 agreements, contracts for deeds, quitclaim deeds, or other
3 such documentation.

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

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

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

1 provider or any other provider licensed under this part which
2 is under the control of the controlling interest. Any person
3 who violates this subsection commits a misdemeanor of the
4 second degree, punishable as provided in s. 775.082 or s.
5 775.083. Each day of continuing violation is a separate
6 offense.

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

15 408.811 Right of inspection; copies; inspection
16 reports.--

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

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

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

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

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

14 (4)(a) Each licensee shall maintain as public
15 information, available upon request, records of all inspection
16 reports pertaining to that provider which have been filed
17 with, or issued by, any governmental agency unless those
18 reports are exempt from, or contain information that is exempt
19 from, s. 119.07(1), or are otherwise made confidential by law.
20 Effective October 1, 2005, copies of such reports shall be
21 retained in the records of the provider for at least 5 years
22 following the date the reports are filed and issued,
23 regardless of a change of ownership.

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

1 408.812 Unlicensed activity.--

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

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

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

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

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

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

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

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

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

25 408.813 Administrative fines.--As a penalty for any
26 violation of this part, authorizing statutes, or applicable
27 rules, the agency may impose an administrative fine. Fines may
28 be imposed both in lieu of and in addition to other penalties
29 or disciplinary measures provided for in this part and
30 authorizing statutes. Unless the amount of the fine is
31 prescribed by authorizing statutes or applicable rules, the

1 agency may establish criteria for the amount of administrative
2 finer applicable to this part, authorizing statutes, and
3 applicable rules. Each day of violation constitutes a separate
4 violation and is subject to a separate fine. For fines imposed
5 by final agency action, the violator shall pay the fine, plus
6 interest at the rate as specified in s. 55.03 for each day
7 beyond the date set by the agency for payment of the fine.

8 408.814 Moratoriums; emergency suspensions.--

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

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

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

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

27 408.815 License denial; revocation.--

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

1 (a) False representation of a material fact in the
2 license application or omission of any material fact from the
3 application.

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

6 (c) A violation of this part, authorizing statutes, or
7 applicable rules.

8 (d) A demonstrated pattern of deficient performance.

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

14 (2) If a licensee lawfully continues to operate while
15 a denial or revocation is pending in litigation, the licensee
16 must continue to meet all other requirements of this part,
17 authorizing statutes, and applicable rules, and must file
18 subsequent renewal applications for licensure, including
19 licensure fees. The provisions of ss. 120.60(1) and
20 408.806(3)(c) do not apply to renewal applications filed
21 during the time period the litigation of the denial or
22 revocation is pending until that litigation is final.

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

26 408.816 Injunctions.--

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

31

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

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

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

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

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

30 408.817 Administrative proceedings.--Administrative
31 proceedings challenging agency enforcement action shall be

1 reviewed on the basis of the facts and conditions that
2 resulted in the agency action.

3 408.818 Health Care Trust Fund.--Unless otherwise
4 prescribed by authorizing statutes, all fees and fines
5 collected pursuant to this part, authorizing statutes, and
6 applicable rules shall be deposited into the Health Care Trust
7 Fund, created in s. 408.16, and used to pay the costs of the
8 agency in administering the provider program paying the fees
9 or fines.

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

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

20 112.0455 Drug-Free Workplace Act.--

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

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

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

30 1. The laboratory is licensed and approved by the
31 Agency for Health Care Administration using criteria

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

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

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

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

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

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

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

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

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

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

20 ~~h. The agency may deny or revoke licensure if the~~
21 ~~applicant:~~

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

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

30 ~~i. An application for license renewal must contain the~~
31 ~~information required under sub subparagraphs e. and f.~~

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

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

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

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

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

15 d. Other necessary and proper actions taken to ensure
16 reliable and accurate drug test results.

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

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

24 2. Positive results on confirmation tests only, or
25 negative results, as applicable.

26 3. A list of the drugs for which the drug analyses
27 were conducted.

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

30
31

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

4
5 No report shall disclose the presence or absence of any drug
6 other than a specific drug and its metabolites listed pursuant
7 to this section.

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

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

23 (13) RULES.--

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

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

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

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

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

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

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

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

22
23 This section shall not be construed to eliminate the
24 bargainable rights as provided in the collective bargaining
25 process where applicable.

26 (17) LICENSE FEE.--Fees from licensure of drug-testing
27 laboratories shall be sufficient to carry out the
28 responsibilities of the Agency for Health Care Administration
29 for the regulation of drug-testing laboratories. In accordance
30 with s. 408.805, applicants and licensees shall pay a fee for
31 each license application submitted under this part, part II of

1 ~~chapter 408, and applicable rules. The fee may not be less~~
2 ~~than \$16,000 or more than \$20,000 per biennium, and shall be~~
3 ~~established by rule. The Agency for Health Care Administration~~
4 ~~shall collect fees for all licenses issued under this part.~~
5 ~~Each nonrefundable fee shall be due at the time of application~~
6 ~~and shall be payable to the Agency for Health Care~~
7 ~~Administration to be deposited in a trust fund administered by~~
8 ~~the Agency for Health Care Administration and used only for~~
9 ~~the purposes of this section. The fee schedule is as follows:~~
10 ~~For licensure as a drug testing laboratory, an annual fee of~~
11 ~~not less than \$8,000 or more than \$10,000 per fiscal year; for~~
12 ~~late filing of an application for renewal, an additional fee~~
13 ~~of \$500 per day shall be charged.~~

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

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

28 Section 8. Section 383.304, Florida Statutes, is
29 repealed.

30 Section 9. Section 383.305, Florida Statutes, is
31 amended to read:

1 383.305 Licensure; ~~issuance, renewal, denial,~~
2 ~~suspension, revocation; fees; background screening.--~~

3 (1)(a) In accordance with s. 408.805, an applicant or
4 licensee shall pay a fee for each license application
5 submitted under this part and part II of chapter 408. The
6 amount of the fee shall be established by rule. Upon receipt
7 of an application for a license and the license fee, the
8 agency shall issue a license if the applicant and facility
9 have received all approvals required by law and meet the
10 requirements established under ss. 383.30 383.335 and by rules
11 promulgated hereunder.

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

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

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

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

7 ~~(b) The fees established pursuant to ss.~~
8 ~~383.30 383.335 shall be based on actual costs incurred by the~~
9 ~~agency in the administration of its duties under such~~
10 ~~sections.~~

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

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

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

23 ~~(2)(7)~~ Each applicant for licensure and each licensee
24 must comply with the following requirements of part II of
25 chapter 408, with the exception of s. 408.810(7)-(10).+

26 ~~(a) Upon receipt of a completed, signed, and dated~~
27 ~~application, the agency shall require background screening, in~~
28 ~~accordance with the level 2 standards for screening set forth~~
29 ~~in chapter 435, of the managing employee, or other similarly~~
30 ~~titled individual who is responsible for the daily operation~~
31 ~~of the center, and of the financial officer, or other~~

1 ~~similarly titled individual who is responsible for the~~
2 ~~financial operation of the center, including billings for~~
3 ~~patient care and services. The applicant must comply with the~~
4 ~~procedures for level 2 background screening as set forth in~~
5 ~~chapter 435 as well as the requirements of s. 435.03(3).~~

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

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

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

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

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

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

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

8 ~~(h) The agency may deny or revoke licensure if the~~
9 ~~applicant:~~

10 1. ~~Has falsely represented a material fact in the~~
11 ~~application required by paragraph (c) or paragraph (f), or has~~
12 ~~omitted any material fact from the application required by~~
13 ~~paragraph (c) or paragraph (f); or~~

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

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

19 Section 10. Section 383.309, Florida Statutes, is
20 amended to read:

21 383.309 Minimum standards for birth centers; rules and
22 enforcement.--

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

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

31

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

5 (c) Licensed facilities are established, organized,
6 and operated consistent with established programmatic
7 standards.

8 ~~(2) Any licensed facility that is in operation at the~~
9 ~~time of adoption of any applicable rule under ss.~~
10 ~~383.30 383.335 shall be given a reasonable time under the~~
11 ~~particular circumstances, not to exceed 1 year after the date~~
12 ~~of such adoption, within which to comply with such rule.~~

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

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

30 383.315 Agreements with consultants for advice or
31 services; maintenance.--

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

5 Section 12. Section 383.324, Florida Statutes, is
6 amended to read:

7 383.324 ~~Inspections and investigations~~; Inspection
8 fees.--

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

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

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

18 Section 13. Section 383.325, Florida Statutes, is
19 repealed.

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

22 383.33 Administrative fines ~~penalties~~; emergency
23 ~~orders~~; moratorium on admissions.--

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

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

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

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

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

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

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

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

27 Section 15. Sections 383.331 and 383.332, Florida
28 Statutes, are repealed.

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

31 383.335 Partial exemptions.--

1 (1) Any facility ~~that which~~ was providing obstetrical
2 and gynecological surgical services and was owned and operated
3 by a board-certified obstetrician on June 15, 1984, and that
4 ~~which~~ is otherwise subject to licensure under ss.
5 383.30-383.335 as a birth center, is exempt from the
6 provisions of ss. 383.30-383.335 and part II of chapter 408
7 which restrict the provision of surgical services and outlet
8 forceps delivery and the administration of anesthesia at birth
9 centers. The agency shall adopt rules specifically related to
10 the performance of such services and the administration of
11 anesthesia at such facilities.

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

14 390.011 Definitions.--As used in this chapter, the
15 term:

16 (5) "Hospital" means a facility as defined in s.
17 395.002 and licensed under chapter 395.

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

20 390.012 Powers of agency; rules; disposal of fetal
21 remains.--

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

1 freedom to decide whether to terminate her pregnancy. The
2 rules shall provide for:

3 (a) The performance of pregnancy termination
4 procedures only by a licensed physician.

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

8 Section 19. Section 390.013, Florida Statutes, is
9 repealed.

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

12 390.014 Licenses; fees, display, etc.--

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

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

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

1 ~~shall be reasonably calculated to cover the cost of regulation~~
2 ~~under this chapter, but may not be less than \$70 or \$35 nor~~
3 ~~more than \$500 per biennium \$250.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (b) Nursing homes licensed under chapter 400.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 394.877 Fees.--In accordance with s. 408.805, an
11 applicant or licensee shall pay a fee for each license
12 application submitted under this part, part II of chapter 408,
13 and applicable rules. The amount of the fee shall be
14 established by rule.

15 ~~(1) Each application for licensure or renewal must be~~
16 ~~accompanied by a fee set by the department, in consultation~~
17 ~~with the agency, by rule. Such fees shall be reasonably~~
18 ~~calculated to cover only the cost of regulation under this~~
19 ~~chapter.~~

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

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

24 394.878 Issuance and renewal of licenses.--

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

29 ~~(2) A license is valid for a period of 1 year. An~~
30 ~~applicant for renewal of a license shall apply to the agency~~
31

1 ~~no later than 90 days before expiration of the current~~
2 ~~license.~~

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

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

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

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

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

31

1 Section 30. Subsections (1), (3), and (4) of section
2 394.879, Florida Statutes, are amended to read:

3 394.879 Rules; enforcement.--

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

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

13 (b) Adequate space is provided each client of a
14 licensed facility.

15 (c) Licensed facilities are limited to an appropriate
16 number of beds.

17 (d) Each licensee establishes and implements adequate
18 infection control, housekeeping, sanitation, disaster
19 planning, and medical recordkeeping.

20 (e) Licensed facilities are established, organized,
21 and operated in accordance with programmatic standards of the
22 department.

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

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

30 (4) In accordance with part II of chapter 408, the
31 agency may impose an administrative penalty of no more than

1 \$500 per day against any licensee that violates any rule
2 adopted pursuant to this section and may suspend and ~~or~~ revoke
3 the license and ~~or~~ deny the renewal application of such
4 licensee. In imposing such penalty, the agency shall consider
5 the severity of the violation, actions taken by the licensee
6 to correct the violation, and previous violations by the
7 licensee. ~~Fines collected under this subsection shall be
8 deposited in the Mental Health Facility Licensing Trust Fund.~~

9 Section 31. Paragraph (a) of subsection (1) of section
10 394.90, Florida Statutes, is amended to read:

11 394.90 Inspection; right of entry; records.--

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

16 Section 32. Section 394.902, Florida Statutes, is
17 repealed.

18 Section 33. Subsection (7) of section 394.907, Florida
19 Statutes, is amended to read:

20 394.907 Community mental health centers; quality
21 assurance programs.--

22 (7) The department shall have access to all records
23 necessary to determine licensee ~~agency~~ compliance with the
24 provisions of this section. The records of quality assurance
25 programs which relate solely to actions taken in carrying out
26 the provisions of this section, and records obtained by the
27 department to determine licensee ~~agency~~ compliance with this
28 section, are confidential and exempt from s. 119.07(1). Such
29 records are not admissible in any civil or administrative
30 action, except in disciplinary proceedings by the Department
31 of Business and Professional Regulation and the appropriate

1 regulatory board, nor shall such records be available to the
2 public as part of the record of investigation for, and
3 prosecution in disciplinary proceedings made available to the
4 public by the Department of Business and Professional
5 Regulation or the appropriate regulatory board. Meetings or
6 portions of meetings of quality assurance program committees
7 that relate solely to actions taken pursuant to this section
8 are exempt from s. 286.011.

9 Section 34. Subsection (4) of section 395.002, Florida
10 Statutes, is repealed.

11 Section 35. Section 395.003, Florida Statutes, is
12 amended to read:

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

15 (1)(a) The requirements of part II of chapter 408
16 apply to the provision of services that necessitate licensure
17 pursuant to ss. 395.001-395.1065 and part II of chapter 408
18 and to entities licensed by or applying for such licensure
19 from the Agency for Health Care Administration pursuant to ss.
20 395.001-395.1065. A person may not establish, conduct, or
21 maintain a hospital, ambulatory surgical center, or mobile
22 surgical facility in this state without first obtaining a
23 license under this part.

24 (b)1. It is unlawful for a person to use or advertise
25 to the public, in any way or by any medium whatsoever, any
26 facility as a "hospital," "ambulatory surgical center," or
27 "mobile surgical facility" unless such facility has first
28 secured a license under the provisions of this part.

29 2. This part does not apply to veterinary hospitals or
30 to commercial business establishments using the word
31 "hospital," "ambulatory surgical center," or "mobile surgical

1 facility" as a part of a trade name if no treatment of human
2 beings is performed on the premises of such establishments.

3 (c)3- By December 31, 2004, the agency shall submit a
4 report to the President of the Senate and the Speaker of the
5 House of Representatives recommending whether it is in the
6 public interest to allow a hospital to license or operate an
7 emergency department located off the premises of the hospital.
8 If the agency finds it to be in the public interest, the
9 report shall also recommend licensure criteria for such
10 medical facilities, including criteria related to quality of
11 care and, if deemed necessary, the elimination of the
12 possibility of confusion related to the service capabilities
13 of such facility in comparison to the service capabilities of
14 an emergency department located on the premises of the
15 hospital. Until July 1, 2005, additional emergency departments
16 located off the premises of licensed hospitals may not be
17 authorized by the agency.

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

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

30 ~~(c) A license, unless sooner suspended or revoked,~~
31 ~~shall automatically expire 2 years from the date of issuance~~

1 ~~and shall be renewable biennially upon application for renewal~~
2 ~~and payment of the fee prescribed by s. 395.004(2), provided~~
3 ~~the applicant and licensed facility meet the requirements~~
4 ~~established under this part and in rules. An application for~~
5 ~~renewal of a license shall be made 90 days prior to expiration~~
6 ~~of the license, on forms provided by the agency.~~

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

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

28 (c)(f) Intensive residential treatment programs for
29 children and adolescents which have received accreditation
30 from the Joint Commission on Accreditation of Healthcare
31 Organizations and which meet the minimum standards developed

1 by rule of the agency for such programs shall be licensed by
2 the agency under this part.

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

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

16 (3)2. After a change of ownership has occurred, the
17 transferee shall be liable for any liability to the state,
18 regardless of when identified, resulting from changes to
19 allowable costs affecting provider reimbursement for Medicaid
20 participation or Public Medical Assistance Trust Fund
21 Assessments, and related administrative fines. ~~The~~
22 ~~transferee, simultaneously with the transfer of ownership,~~
23 ~~shall pay or make arrangements to pay to the agency or the~~
24 ~~department any amount owed to the agency or the department;~~
25 ~~payment assurances may be in the form of an irrevocable credit~~
26 ~~instrument or payment bond acceptable to the agency or the~~
27 ~~department provided by or on behalf of the transferor. The~~
28 ~~issuance of a license to the transferee shall be delayed~~
29 ~~pending payment or until arrangement for payment acceptable to~~
30 ~~the agency or the department is made.~~

31

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

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

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

20 (6) No specialty hospital shall provide any service or
21 regularly serve any population group beyond those services or
22 groups specified in its license.

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

25 (7)(8) In addition to the requirements of part II of
26 chapter 408, whenever the agency finds that there has been a
27 substantial failure to comply with the requirements
28 established under this part or in rules, the agency is
29 authorized to deny, modify, suspend, or revoke:

30 (a) A license;

31

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

3 (c) Licensure approval limited to a facility,
4 building, or portion thereof, or a service, within a given
5 premises.

6 ~~(8)(9)~~ A hospital may not be licensed or relicensed
7 if:

8 (a) The diagnosis-related groups for 65 percent or
9 more of the discharges from the hospital, in the most recent
10 year for which data is available to the Agency for Health Care
11 Administration pursuant to s. 408.061, are for diagnosis,
12 care, and treatment of patients who have:

13 1. Cardiac-related diseases and disorders classified
14 as diagnosis-related groups 103-145, 478-479, 514-518, or
15 525-527;

16 2. Orthopedic-related diseases and disorders
17 classified as diagnosis-related groups 209-256, 471, 491,
18 496-503, or 519-520;

19 3. Cancer-related diseases and disorders classified as
20 diagnosis-related groups 64, 82, 172, 173, 199, 200, 203,
21 257-260, 274, 275, 303, 306, 307, 318, 319, 338, 344, 346,
22 347, 363, 366, 367, 400-414, 473, or 492; or

23 4. Any combination of the above discharges.

24 (b) The hospital restricts its medical and surgical
25 services to primarily or exclusively cardiac, orthopedic,
26 surgical, or oncology specialties.

27 ~~(9)(10)~~ A hospital licensed as of June 1, 2004, shall
28 be exempt from subsection ~~(8)(9)~~ as long as the hospital
29 maintains the same ownership, facility street address, and
30 range of services that were in existence on June 1, 2004. Any
31 transfer of beds, or other agreements that result in the

1 establishment of a hospital or hospital services within the
2 intent of this section, shall be subject to subsection(8)
3 ~~(9)~~. Unless the hospital is otherwise exempt under subsection
4 ~~(8)(9)~~, the agency shall deny or revoke the license of a
5 hospital that violates any of the criteria set forth in that
6 subsection.

7 ~~(10)(11)~~ The agency may adopt rules implementing the
8 licensure requirements set forth in subsection(8)~~(9)~~. Within
9 14 days after rendering its decision on a license application
10 or revocation, the agency shall publish its proposed decision
11 in the Florida Administrative Weekly. Within 21 days after
12 publication of the agency's decision, any authorized person
13 may file a request for an administrative hearing. In
14 administrative proceedings challenging the approval, denial,
15 or revocation of a license pursuant to subsection(8)~~(9)~~, the
16 hearing must be based on the facts and law existing at the
17 time of the agency's proposed agency action. Existing
18 hospitals may initiate or intervene in an administrative
19 hearing to approve, deny, or revoke licensure under subsection
20 ~~(8)(9)~~ based upon a showing that an established program will
21 be substantially affected by the issuance or renewal of a
22 license to a hospital within the same district or service
23 area.

24 Section 36. Section 395.004, Florida Statutes, is
25 amended to read:

26 395.004 Application for license, fees; expenses.--

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

1 ~~be made under oath to the agency, upon forms provided by it,~~
2 ~~and shall contain such information as the agency reasonably~~
3 ~~requires, which may include affirmative evidence of ability to~~
4 ~~comply with applicable laws and rules.~~

5 ~~(2) Each application for a general hospital license,~~
6 ~~specialty hospital license, ambulatory surgical center~~
7 ~~license, or mobile surgical facility license, or renewal~~
8 ~~thereof, shall be accompanied by a license fee, in accordance~~
9 ~~with the following schedule:~~

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

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

23 Section 37. Section 395.0055, Florida Statutes, is
24 repealed.

25 Section 38. Section 395.0161, Florida Statutes, is
26 amended to read:

27 395.0161 Licensure inspection.--

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

1 ~~(a) Inspections directed by the Health Care Financing~~
2 ~~Administration.~~

3 ~~(b) Validation inspections.~~

4 ~~(c) Lifesafety inspections.~~

5 ~~(d) Licensure complaint investigations, including full~~
6 ~~licensure investigations with a review of all licensure~~
7 ~~standards as outlined in the administrative rules. Complaints~~
8 ~~received by the agency from individuals, organizations, or~~
9 ~~other sources are subject to review and investigation by the~~
10 ~~agency.~~

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

12 ~~(f)~~ inspections of mobile surgical facilities at each
13 time a facility establishes a new location, prior to the
14 admission of patients. However, such inspections shall not be
15 required when a mobile surgical facility is moved temporarily
16 to a location where medical treatment will not be provided.

17 (2) The agency shall accept, in lieu of its own
18 periodic inspections for licensure, the survey or inspection
19 of an accrediting organization, provided the accreditation of
20 the licensed facility is not provisional and provided the
21 licensed facility authorizes release of, and the agency
22 receives the report of, the accrediting organization. The
23 agency shall develop, and adopt by rule, criteria for
24 accepting survey reports of accrediting organizations in lieu
25 of conducting a state licensure inspection.

26 (3) In accordance with s. 408.805, an applicant or
27 licensee shall pay a fee for each license application
28 submitted under this part, part II of chapter 408, and
29 applicable rules. With the exception of state-operated
30 licensed facilities, each facility licensed under this part
31

1 shall pay to the agency, at the time of inspection, the
2 following fees:

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

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

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

15 Section 39. Section 395.0162, Florida Statutes, is
16 repealed.

17 Section 40. Subsections (2) and (3) of section
18 395.0163, Florida Statutes, are amended to read:

19 395.0163 Construction inspections; plan submission and
20 approval; fees.--

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

1 Any subsequent payment that is due is payable upon receipt of
2 the invoice from the agency.

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

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

15 Section 41. Subsection (4) of section 395.0193,
16 Florida Statutes, is amended to read:

17 395.0193 Licensed facilities; peer review;
18 disciplinary powers; agency or partnership with physicians.--

19 (4) Pursuant to ss. 458.337 and 459.016, any
20 disciplinary actions taken under subsection (3) shall be
21 reported in writing to the Department of Health ~~Division of~~
22 ~~Health Quality Assurance of the agency~~ within 30 working days
23 after its initial occurrence, regardless of the pendency of
24 appeals to the governing board of the hospital. The
25 notification shall identify the disciplined practitioner, the
26 action taken, and the reason for such action. All final
27 disciplinary actions taken under subsection (3), if different
28 from those which were reported to the department ~~agency~~ within
29 30 days after the initial occurrence, shall be reported within
30 10 working days to the Department of Health ~~Division of Health~~
31 ~~Quality Assurance of the agency~~ in writing and shall specify

1 the disciplinary action taken and the specific grounds
2 therefor. Final disciplinary actions shall be reported monthly
3 to the Division of Health Quality Assurance of the agency. ~~The~~
4 ~~division shall review each report and determine whether it~~
5 ~~potentially involved conduct by the licensee that is subject~~
6 ~~to disciplinary action, in which case s. 456.073 shall apply.~~
7 The reports are not subject to inspection under s. 119.07(1)
8 even if the division's investigation results in a finding of
9 probable cause.

10 Section 42. Section 395.0199, Florida Statutes, is
11 amended to read:

12 395.0199 Private utilization review.--

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

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

16 (b) Foster greater coordination between providers and
17 health insurers performing utilization review.

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

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

28 (2) The requirements of part II of chapter 408 apply
29 to the provision of services that necessitate registration or
30 licensure pursuant to s. 395.0199 and part II of chapter 408
31 and to persons registered by or applying for such registration

1 from the Agency for Health Care Administration pursuant to
2 this section. However, each applicant for registration and
3 registrant is exempt from the provisions of ss.
4 408.806(1)(e)2., 408.810(5)-(10), and 408.811. A private
5 review agent conducting utilization review as to health care
6 services performed or proposed to be performed in this state
7 shall register with the agency in accordance with this
8 section.

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (5)~~(7)~~ No insurer shall knowingly contract with or
6 utilize a private review agent which has failed to register as
7 required by this section or which has had a registration
8 revoked by the agency.

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

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

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

29 Section 43. Section 395.1046, Florida Statutes, is
30 amended to read:

31 395.1046 Complaint investigation procedures.--

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

22 (2) The agency or its agent shall expeditiously
23 investigate each complaint against a hospital for a violation
24 of s. 395.1041. When its investigation is complete, the
25 agency shall prepare an investigative report. The report shall
26 contain the investigative findings and the recommendations of
27 the agency ~~concerning the existence of probable cause.~~

28 (3) The complaint and all information obtained by the
29 agency during an investigation conducted pursuant to this
30 section are exempt from the provisions of s. 119.07(1) and s.
31 24(a), Art. I of the State Constitution until 10 days after

1 the facility has been determined by the agency to be out of
2 compliance with regulatory requirements ~~probable cause has~~
3 ~~been found to exist by the agency, or until the person who is~~
4 ~~the subject of the investigation waives his or her privilege~~
5 ~~of confidentiality, whichever occurs first.~~ In cases where the
6 agency finds that the complaint is not legally sufficient or
7 does not demonstrate the facility's noncompliance with
8 regulatory requirements ~~when the agency determines that no~~
9 ~~probable cause exists~~, all records pertaining thereto are
10 confidential and exempt from the provisions of s. 119.07(1)
11 and s. 24(a), Art. I of the State Constitution. However, the
12 complaint and a summary of the agency's findings shall be
13 available, although information therein identifying an
14 individual shall not be disclosed.

15 Section 44. Subsections (1) and (7) of section
16 395.1055, Florida Statutes, are amended to read:

17 395.1055 Rules and enforcement.--

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

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

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

30 (c) A comprehensive emergency management plan is
31 prepared and updated annually. Such standards must be

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

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

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

26 (f) All hospitals submit such data as necessary to
27 conduct certificate-of-need reviews required under part I of
28 chapter 408 ~~ss. 408.031-408.045~~. Such data shall include, but
29 shall not be limited to, patient origin data, hospital
30 utilization data, type of service reporting, and facility
31 staffing data. The agency shall not collect data that

1 identifies or could disclose the identity of individual
2 patients. The agency shall utilize existing uniform statewide
3 data sources when available and shall minimize reporting costs
4 to hospitals.

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

14 (h) Licensed facilities make available on their
15 Internet websites, no later than October 1, 2004, and in a
16 hard copy format upon request, a description of and a link to
17 the patient charge and performance outcome data collected from
18 licensed facilities pursuant to s. 408.061.

19 (7) Each licensed facility shall comply with the
20 requirements contained in s. 381.005(2) with respect to
21 immunizations against the influenza virus and pneumococcal
22 bacteria. ~~Any licensed facility which is in operation at the~~
23 ~~time of promulgation of any applicable rules under this part~~
24 ~~shall be given a reasonable time, under the particular~~
25 ~~circumstances, but not to exceed 1 year from the date of such~~
26 ~~promulgation, within which to comply with such rules.~~

27 Section 45. Section 395.1065, Florida Statutes, is
28 amended to read:

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

31

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

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

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

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

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

24 3. Any previous violations of the licensee.

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

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

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

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

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

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

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

25 | ~~(4)(7)~~ The agency shall impose a fine of \$500 for each
26 | instance of the facility's failure to provide the information
27 | required by rules adopted pursuant to s. 395.1055(1)(h).

28 | Section 46. Subsection (1) of section 395.10973,
29 | Florida Statutes, is amended to read:

30 | 395.10973 Powers and duties of the agency.--It is the
31 | function of the agency to:

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

4 Section 47. Section 395.10974, Florida Statutes, is
5 amended to read:

6 395.10974 Health care risk managers; qualifications,
7 licensure, fees.--

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

19 (a) Applicable standards of health care risk
20 management.

21 (b) Applicable federal, state, and local health and
22 safety laws and rules.

23 (c) General risk management administration.

24 (d) Patient care.

25 (e) Medical care.

26 (f) Personal and social care.

27 (g) Accident prevention.

28 (h) Departmental organization and management.

29 (i) Community interrelationships.

30 (j) Medical terminology.

31

1 Each applicant for licensure and licensee must comply with all
2 provisions of part II of chapter 408 with the exception of ss.
3 408.806(1)(e)2., 408.810, and 408.811. The agency may require
4 such additional information, from the applicant or any other
5 person, as may be reasonably required to verify the
6 information contained in the application.

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

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

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

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

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

18 3. Has obtained 1 year of practical experience in
19 health care risk management.

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

31

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

5 Section 48. Subsections (5) and (20) of section
6 400.021, Florida Statutes, are repealed.

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

9 400.022 Residents' rights.--

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

23 Section 50. Paragraph (b) of subsection (1) of section
24 400.051, Florida Statutes, is amended to read:

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

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

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

31

1 Section 51. Section 400.062, Florida Statutes, is
2 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

16 400.063 Resident Protection Trust Fund.--

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

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

11 Section 53. Section 400.071, Florida Statutes, is
12 amended to read:

13 400.071 Application for license.--

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

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

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

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

31

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

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

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

9 ~~(a)(e)~~ A signed affidavit disclosing any financial or
10 ownership interest that a controlling interest, as defined in
11 part II of chapter 408, person or entity described in
12 ~~paragraph (a) or paragraph (d)~~ has held in the last 5 years in
13 any entity licensed by this state or any other state to
14 provide health or residential care which has closed
15 voluntarily or involuntarily; has filed for bankruptcy; has
16 had a receiver appointed; has had a license denied, suspended,
17 or revoked; or has had an injunction issued against it which
18 was initiated by a regulatory agency. The affidavit must
19 disclose the reason any such entity was closed, whether
20 voluntarily or involuntarily.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ~~(2)(7)~~ As a condition of licensure, each licensee,
30 except one offering continuing care agreements as defined in
31 chapter 651, must agree to accept recipients of Title XIX of

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

7 | ~~(3)(8) The agency may not issue a license to a nursing~~
8 | ~~home that fails to receive a certificate of need under the~~
9 | ~~provisions of ss. 408.031-408.045.~~ It is the intent of the
10 | Legislature that, in reviewing a certificate-of-need
11 | application to add beds to an existing nursing home facility,
12 | preference be given to the application of a licensee who has
13 | been awarded a Gold Seal as provided for in s. 400.235, if the
14 | applicant otherwise meets the review criteria specified in s.
15 | 408.035.

16 | ~~(4)(9)~~ The agency may develop an abbreviated survey
17 | for licensure renewal applicable to a licensee that has
18 | continuously operated as a nursing facility since 1991 or
19 | earlier, has operated under the same management for at least
20 | the preceding 30 months, and has had during the preceding 30
21 | months no class I or class II deficiencies.

22 | ~~(5)(10)~~ As a condition of licensure, each facility
23 | must establish and submit with its application a plan for
24 | quality assurance and for conducting risk management.

25 | ~~(11) The applicant must provide the agency with proof~~
26 | ~~of a legal right to occupy the property before a license may~~
27 | ~~be issued. Proof may include, but is not limited to, copies of~~
28 | ~~warranty deeds, lease or rental agreements, contracts for~~
29 | ~~deeds, or quitclaim deeds.~~

30 | Section 54. Subsection (3) of section 400.0712,
31 | Florida Statutes, is repealed.

1 Section 55. Section 400.102, Florida Statutes, is
2 amended to read:

3 400.102 Action by agency against licensee; grounds.--

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

7 ~~(1)(a)~~ An intentional or negligent act materially
8 affecting the health or safety of residents of the facility;

9 ~~(2)(b)~~ Misappropriation or conversion of the property
10 of a resident of the facility;

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

15 ~~(d) Violation of provisions of this part or rules~~
16 ~~adopted under this part;~~

17 ~~(4)(e)~~ Fraudulent altering, defacing, or falsifying
18 any medical or nursing home records, or causing or procuring
19 any of these offenses to be committed; ~~or~~

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

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

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

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

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

31

1 Section 56. Section 400.111, Florida Statutes, is
2 amended to read:

3 400.111 Renewal ~~Expiration~~ of license; ~~renewal~~.--

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

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

31

1 ~~regarding the issuance of a temporary permit during the~~
2 ~~pendency of the judicial proceeding.~~

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

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

22 Section 57. Subsections (2) and (5) of section
23 400.1183, Florida Statutes, are amended to read:

24 400.1183 Resident grievance procedures.--

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

31

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

4 Section 58. Section 400.121, Florida Statutes, is
5 amended to read:

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

9 (1) The agency may deny an application, revoke or
10 suspend a license, and ~~or~~ impose an administrative fine, not
11 to exceed \$500 per violation per day for the violation of any
12 provision of this part, part II of chapter 408, or applicable
13 rules, against any applicant or licensee for the following
14 violations by the applicant, licensee, or other controlling
15 interest:

16 (a) A violation of any provision of this part, part II
17 of chapter 408, or applicable rules s. 400.102(1); or

18 ~~(b) A demonstrated pattern of deficient practice;~~

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

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

27 ~~or~~

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

1 | adverse action involves solely the management company, the
2 | applicant or licensee shall be given 30 days to remedy before
3 | final action is taken. If the adverse action is based solely
4 | upon actions by a controlling interest, the applicant or
5 | licensee may present factors in mitigation of any proposed
6 | penalty based upon a showing that such penalty is
7 | inappropriate under the circumstances.
8 |

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

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

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

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

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

28 | (c) Is cited for two class I deficiencies arising from
29 | unrelated circumstances during the same survey or
30 | investigation; or
31 |

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

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

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

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

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

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

30 ~~(6)(7) The agency is authorized to require a facility~~
31 ~~to increase staffing beyond the minimum required by law, if~~

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

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

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

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

23 | Section 59. Section 400.125, Florida Statutes, is
24 | repealed.

25 | Section 60. Subsections (14), (15), (16), and (20) of
26 | section 400.141, Florida Statutes, are amended to read:

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

30 | (14) Submit to the agency the information specified in
31 | s. 400.071(1)(a) ~~s. 400.071(2)(e)~~ for a management company

1 within 30 days after the effective date of the management
2 agreement.

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

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

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

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

31

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

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

17 ~~(d)(f)~~ A facility that ~~which~~ has a conditional license
18 must be in compliance with the standards in s. 400.23(3)(a) at
19 all times following the effective date of the conditional
20 license until the effective date of a subsequent standard
21 license.

22
23 Nothing in this section shall limit the agency's ability to
24 impose a deficiency or take other actions if a facility does
25 not have enough staff to meet the residents' needs.

26 (16) Report by the 10th calendar day of the month
27 ~~monthly~~ the number of vacant beds in the facility which are
28 available for resident occupancy on the last day of the month
29 ~~information is reported~~.

30 (20) Maintain general and professional liability
31 insurance coverage in accordance with part II of chapter 408

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

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

10 400.179 ~~Sale or transfer of ownership of a nursing~~
11 ~~facility;~~ Liability for Medicaid underpayments and
12 overpayments.--

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

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

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

30 (4) ~~The transferor shall, prior to transfer of~~
31 ~~ownership, repay or make arrangements to repay to the agency~~

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

8 (2)~~(5)~~ Because any transfer of a nursing facility may
9 expose the fact that Medicaid may have underpaid or overpaid
10 the transferor, and because in most instances, any such
11 underpayment or overpayment can only be determined following a
12 formal field audit, the liabilities for any such underpayments
13 or overpayments shall be as follows:

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

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

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

1 and the agency shall cooperate in every way with the
2 identification of such amounts. Readily identifiable
3 overpayments shall include overpayments that will result from,
4 but not be limited to:

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

8 or

- 9 4. Audits completed by the agency.

10
11 The transferor shall remain liable for any such Medicaid
12 overpayments that were not readily identifiable 90 days in
13 advance of the nursing facility transfer.

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

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

23 2. A leasehold licensee may meet the requirements of
24 subparagraph 1. by payment of a nonrefundable fee, paid at
25 initial licensure, paid at the time of any subsequent change
26 of ownership, and paid annually thereafter ~~at the time of any~~
27 ~~subsequent annual license renewal~~, in the amount of 2 percent
28 of the total of 3 months' Medicaid payments to the facility
29 computed on the basis of the preceding 12-month average
30 Medicaid payments to the facility. If a preceding 12-month
31 average is not available, projected Medicaid payments may be

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

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

24 ~~b.~~ ~~The agency, in consultation with the Florida Health~~
25 ~~Care Association and the Florida Association of Homes for the~~
26 ~~Aging, shall study and make recommendations on the minimum~~
27 ~~amount to be held in reserve to protect against Medicaid~~
28 ~~overpayments to leasehold licensees and on the issue of~~
29 ~~successor liability for Medicaid overpayments upon sale or~~
30 ~~transfer of ownership of a nursing facility. The agency shall~~
31 ~~submit the findings and recommendations of the study to the~~

1 ~~Governor, the President of the Senate, and the Speaker of the~~
2 ~~House of Representatives by January 1, 2003.~~

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

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

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

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

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

3 400.18 Closing of nursing facility.--

4 (1) In addition to the requirements of part II of
5 chapter 408, Whenever a licensee voluntarily discontinues
6 operation, and during the period when it is preparing for such
7 discontinuance, it shall inform the agency not less than 90
8 days prior to the discontinuance of operation. the licensee
9 also shall inform each ~~the~~ resident or the next of kin, legal
10 representative, or agency acting on behalf of the resident of
11 the fact, and the proposed time, of ~~such~~ discontinuance of
12 operation and give at least 90 days' notice so that suitable
13 arrangements may be made for the transfer and care of the
14 resident. In the event any resident has no such person to
15 represent him or her, the licensee shall be responsible for
16 securing a suitable transfer of the resident before the
17 discontinuance of operation. The agency shall be responsible
18 for arranging for the transfer of those residents requiring
19 transfer who are receiving assistance under the Medicaid
20 program.

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

24 Section 63. Subsections (1), (2), and (3) of section
25 400.19, Florida Statutes, are amended to read:

26 400.19 Right of entry and inspection.--

27 (1) In accordance with part II of chapter 408, the
28 agency and any duly designated officer or employee thereof or
29 a member of the State Long-Term Care Ombudsman Council or the
30 local long-term care ombudsman council shall have the right to
31 enter upon and into the premises of any facility licensed

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

25 (2) The agency shall coordinate nursing home facility
26 licensing activities and responsibilities of any duly
27 designated officer or employee involved in nursing home
28 facility inspection to assure necessary, equitable, and
29 consistent supervision of inspection personnel without
30 unnecessary duplication of inspections, consultation services,
31 or complaint investigations. ~~To facilitate such coordination,~~

1 ~~all rules promulgated by the agency pursuant to this part~~
2 ~~shall be distributed to nursing homes licensed under s.~~
3 ~~400.062 30 days prior to implementation. This requirement~~
4 ~~does not apply to emergency rules.~~

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

1 unannounced inspections by an employee of the agency to any
2 unauthorized person shall constitute cause for suspension of
3 not fewer than 5 working days according to the provisions of
4 chapter 110.

5 Section 64. Section 400.191, Florida Statutes, is
6 amended to read:

7 400.191 Availability, distribution, and posting of
8 reports and records.--

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

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

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

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

30 2. Whether such nursing home facilities are
31 proprietary or nonproprietary.

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

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

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

9 6. The number of private and semiprivate rooms in each
10 facility.

11 7. The religious affiliation, if any, of each
12 facility.

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

15 9. Whether or not each facility accepts Medicare or
16 Medicaid recipients or insurance, health maintenance
17 organization, Veterans Administration, CHAMPUS program, or
18 workers' compensation coverage.

19 10. Recreational and other programs available at each
20 facility.

21 11. Special care units or programs offered at each
22 facility.

23 12. Whether the facility is a part of a retirement
24 community that offers other services pursuant to part III,
25 part IV, or part V.

26 13. Survey and deficiency information ~~contained on the~~
27 ~~Online Survey Certification and Reporting (OSCAR) system of~~
28 ~~the federal Health Care Financing Administration, including~~
29 all federal and state recertification, licensure annual
30 ~~survey~~, revisit, and complaint survey information, for each
31 facility for the past 30 ~~45~~ months. For noncertified nursing

1 homes, state survey and deficiency information, including
2 annual survey, revisit, and complaint survey information for
3 the past 30 ~~45~~ months shall be provided.

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

15 (b) The agency shall provide the following information
16 in printed form:

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

19 2. Whether such nursing home facilities are
20 proprietary or nonproprietary.

21 3. The current owner or owners of the facility's
22 license and the year that entity became the owner of the
23 license.

24 4. The total number of beds, and of private and
25 semiprivate rooms, in each facility.

26 5. The religious affiliation, if any, of each
27 facility.

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

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

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

7 9. Recreational programs, special care units, and
8 other programs available at each facility.

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

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

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

25 ~~(c) For purposes of this subsection, references to the~~
26 ~~Online Survey Certification and Reporting (OSCAR) system shall~~
27 ~~refer to any future system that the Health Care Financing~~
28 ~~Administration develops to replace the current OSCAR system.~~

29 ~~(c)(d)~~ The agency may provide the following additional
30 information on an Internet site or in printed form as the
31 information becomes available:

- 1 1. The licensure status history of each facility.
 - 2 2. The rating history of each facility.
 - 3 3. The regulatory history of each facility, which may
 - 4 include federal sanctions, state sanctions, federal fines,
 - 5 state fines, and other actions.
 - 6 4. Whether the facility currently possesses the Gold
 - 7 Seal designation awarded pursuant to s. 400.235.
 - 8 5. Internet links to the Internet sites of the
 - 9 facilities or their affiliates.
- 10 (3) Each nursing home facility licensee shall maintain
- 11 as public information, available upon request, records of all
- 12 cost and inspection reports pertaining to that facility that
- 13 have been filed with, or issued by, any governmental agency.
- 14 Copies of such reports shall be retained in such records for
- 15 not less than 5 years from the date the reports are filed or
- 16 issued.
- 17 (a) The agency shall ~~quarterly~~ publish in the Nursing
- 18 Home Guide a "Nursing Home Guide Watch List" to assist
- 19 consumers in evaluating the quality of nursing home care in
- 20 Florida. The watch list must identify each facility that met
- 21 the criteria for a conditional licensure status ~~on any day~~
- 22 ~~within the quarter covered by the list~~ and each facility that
- 23 ~~is was~~ operating under bankruptcy protection ~~on any day within~~
- 24 ~~the quarter~~. The watch list must include, but is not limited
- 25 to, the facility's name, address, and ownership; the county in
- 26 which the facility operates; the license expiration date; the
- 27 number of licensed beds; a description of the deficiency
- 28 causing the facility to be placed on the list; any corrective
- 29 action taken; and the cumulative number of days and percentage
- 30 of days times the facility had a conditional license in the
- 31 past 30 months ~~has been on a watch list~~. The watch list must

1 include a brief description regarding how to choose a nursing
2 home, the categories of licensure, the agency's inspection
3 process, an explanation of terms used in the watch list, and
4 the addresses and phone numbers of the agency's ~~managed care~~
5 ~~and~~ health quality assurance field area offices.

6 (b) Upon publication of each quarterly Nursing Home
7 Guide ~~watch list~~, the agency must post ~~transmit~~ a copy of the
8 ~~watch list to each nursing home facility by mail and must make~~
9 ~~the watch list available~~ on the agency's Internet website by
10 the 15th calendar day of the month following the end of the
11 calendar quarter. Each nursing home licensee must retrieve the
12 most recent version of the Nursing Home Guide from the
13 agency's website.

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

21 (5) Every nursing home facility licensee shall:

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

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

1 2. A copy of all pages listing the facility from the
2 most recent version of the Florida Nursing Home Guide ~~Watch~~
3 ~~List~~.

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

12 (6) The agency may adopt rules as necessary to
13 administer this section.

14 Section 65. Section 400.20, Florida Statutes, is
15 amended to read:

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

22 Section 66. Subsections (2), (7), and (8) of section
23 400.23, Florida Statutes, are amended to read:

24 400.23 Rules; evaluation and deficiencies; licensure
25 status.--

26 (2) Pursuant to the intention of the Legislature, the
27 agency, in consultation with the Department of Health and the
28 Department of Elderly Affairs, shall adopt and enforce rules
29 to implement this part and part II of chapter 408, which shall
30 include reasonable and fair criteria in relation to:
31

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

17 (b) The number and qualifications of all personnel,
18 including management, medical, nursing, and other professional
19 personnel, and nursing assistants, orderlies, and support
20 personnel, having responsibility for any part of the care
21 given residents.

22 (c) All sanitary conditions within the facility and
23 its surroundings, including water supply, sewage disposal,
24 food handling, and general hygiene which will ensure the
25 health and comfort of residents.

26 (d) The equipment essential to the health and welfare
27 of the residents.

28 (e) A uniform accounting system.

29 (f) The care, treatment, and maintenance of residents
30 and measurement of the quality and adequacy thereof, based on
31 rules developed under this chapter and the Omnibus Budget

1 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
2 1987), Title IV (Medicare, Medicaid, and Other Health-Related
3 Programs), Subtitle C (Nursing Home Reform), as amended.

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

26 (h) The availability, distribution, and posting of
27 reports and records pursuant to s. 400.191 and the Gold Seal
28 Program pursuant to s. 400.235.

29 (7) The agency shall, at least every 15 months,
30 evaluate all nursing home facilities and make a determination
31 as to the degree of compliance by each licensee with the

1 established rules adopted under this part as a basis for
2 assigning a licensure status to that facility. The agency
3 shall base its evaluation on the most recent inspection
4 report, taking into consideration findings from other official
5 reports, surveys, interviews, investigations, and inspections.
6 The agency shall assign a licensure status of standard or
7 conditional to each nursing home.

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

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

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

30 (d) The current licensure status of each facility must
31 be indicated in bold print on the face of the license. A list

1 of the deficiencies of the facility shall be posted in a
2 prominent place that is in clear and unobstructed public view
3 at or near the place where residents are being admitted to
4 that facility. Licensees receiving a conditional licensure
5 status for a facility shall prepare, within 10 working days
6 after receiving notice of deficiencies, a plan for correction
7 of all deficiencies and shall submit the plan to the agency
8 for approval.

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

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

14 1. Establish uniform procedures for the evaluation of
15 facilities.

16 2. Provide criteria in the areas referenced in
17 paragraph (c).

18 3. Address other areas necessary for carrying out the
19 intent of this section.

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

1 involved, or the situation has occurred in several locations,
2 or the same resident or residents have been affected by
3 repeated occurrences of the same deficient practice but the
4 effect of the deficient practice is not found to be pervasive
5 throughout the facility. A widespread deficiency is a
6 deficiency in which the problems causing the deficiency are
7 pervasive in the facility or represent systemic failure that
8 has affected or has the potential to affect a large portion of
9 the facility's residents. The agency shall indicate the
10 classification on the face of the notice of deficiencies as
11 follows:

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

30 (b) A class II deficiency is a deficiency that the
31 agency determines has compromised the resident's ability to

1 maintain or reach his or her highest practicable physical,
2 mental, and psychosocial well-being, as defined by an accurate
3 and comprehensive resident assessment, plan of care, and
4 provision of services. A class II deficiency is subject to a
5 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
6 a patterned deficiency, and \$7,500 for a widespread
7 deficiency. The fine amount shall be doubled for each
8 deficiency if the facility was previously cited for one or
9 more class I or class II deficiencies during the last
10 licensure ~~annual~~ inspection or any inspection or complaint
11 investigation since the last licensure ~~annual~~ inspection. A
12 fine shall be levied notwithstanding the correction of the
13 deficiency.

14 (c) A class III deficiency is a deficiency that the
15 agency determines will result in no more than minimal
16 physical, mental, or psychosocial discomfort to the resident
17 or has the potential to compromise the resident's ability to
18 maintain or reach his or her highest practical physical,
19 mental, or psychosocial well-being, as defined by an accurate
20 and comprehensive resident assessment, plan of care, and
21 provision of services. A class III deficiency is subject to a
22 civil penalty of \$1,000 for an isolated deficiency, \$2,000 for
23 a patterned deficiency, and \$3,000 for a widespread
24 deficiency. The fine amount shall be doubled for each
25 deficiency if the facility was previously cited for one or
26 more class I or class II deficiencies during the last
27 licensure ~~annual~~ inspection or any inspection or complaint
28 investigation since the last licensure ~~annual~~ inspection. A
29 citation for a class III deficiency must specify the time
30 within which the deficiency is required to be corrected. If a
31

1 class III deficiency is corrected within the time specified,
2 no civil penalty shall be imposed.

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

7 Section 67. Subsections (1) and (2) of section
8 400.241, Florida Statutes, are repealed.

9 Section 68. Section 400.402, Florida Statutes, is
10 amended to read:

11 400.402 Definitions.--When used in this part, the
12 term:

13 (1) "Activities of daily living" means functions and
14 tasks for self-care, including ambulation, bathing, dressing,
15 eating, grooming, and toileting, and other similar tasks.

16 (2) "Administrator" means an individual at least 21
17 years of age who is responsible for the operation and
18 maintenance of an assisted living facility.

19 (3) "Agency" means the Agency for Health Care
20 Administration.

21 (4) "Aging in place" or "age in place" means the
22 process of providing increased or adjusted services to a
23 person to compensate for the physical or mental decline that
24 may occur with the aging process, in order to maximize the
25 person's dignity and independence and permit them to remain in
26 a familiar, noninstitutional, residential environment for as
27 long as possible. Such services may be provided by facility
28 staff, volunteers, family, or friends, or through contractual
29 arrangements with a third party.

30
31

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

4 (5)~~(6)~~ "Assisted living facility" means any building
5 or buildings, section or distinct part of a building, private
6 home, boarding home, home for the aged, or other residential
7 facility, whether operated for profit or not, which undertakes
8 through its ownership or management to provide housing, meals,
9 and one or more personal services for a period exceeding 24
10 hours to one or more adults who are not relatives of the owner
11 or administrator.

12 (6)~~(7)~~ "Chemical restraint" means a pharmacologic drug
13 that physically limits, restricts, or deprives an individual
14 of movement or mobility, and is used for discipline or
15 convenience and not required for the treatment of medical
16 symptoms.

17 (7)~~(8)~~ "Community living support plan" means a written
18 document prepared by a mental health resident and the
19 resident's mental health case manager in consultation with the
20 administrator of an assisted living facility with a limited
21 mental health license or the administrator's designee. A copy
22 must be provided to the administrator. The plan must include
23 information about the supports, services, and special needs of
24 the resident which enable the resident to live in the assisted
25 living facility and a method by which facility staff can
26 recognize and respond to the signs and symptoms particular to
27 that resident which indicate the need for professional
28 services.

29 (8)~~(9)~~ "Cooperative agreement" means a written
30 statement of understanding between a mental health care
31 provider and the administrator of the assisted living facility

1 with a limited mental health license in which a mental health
2 resident is living. The agreement must specify directions for
3 accessing emergency and after-hours care for the mental health
4 resident. A single cooperative agreement may service all
5 mental health residents who are clients of the same mental
6 health care provider.

7 ~~(9)(10)~~ "Department" means the Department of Elderly
8 Affairs.

9 ~~(10)(11)~~ "Emergency" means a situation, physical
10 condition, or method of operation which presents imminent
11 danger of death or serious physical or mental harm to facility
12 residents.

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

22 ~~(12)(13)~~ "Guardian" means a person to whom the law has
23 entrusted the custody and control of the person or property,
24 or both, of a person who has been legally adjudged
25 incapacitated.

26 ~~(13)(14)~~ "Limited nursing services" means acts that
27 may be performed pursuant to part I of chapter 464 by persons
28 licensed thereunder while carrying out their professional
29 duties but limited to those acts which the agency department
30 specifies by rule. Acts ~~that~~ which may be specified by rule
31 as allowable limited nursing services shall be for persons who

1 meet the admission criteria established by the agency
2 ~~department~~ for assisted living facilities and shall not be
3 complex enough to require 24-hour nursing supervision and may
4 include such services as the application and care of routine
5 dressings, and care of casts, braces, and splints.

6 ~~(14)(15)~~ "Managed risk" means the process by which the
7 facility staff discuss the service plan and the needs of the
8 resident with the resident and, if applicable, the resident's
9 representative or designee or the resident's surrogate,
10 guardian, or attorney in fact, in such a way that the
11 consequences of a decision, including any inherent risk, are
12 explained to all parties and reviewed periodically in
13 conjunction with the service plan, taking into account changes
14 in the resident's status and the ability of the facility to
15 respond accordingly.

16 ~~(15)(16)~~ "Mental health resident" means an individual
17 who receives social security disability income due to a mental
18 disorder as determined by the Social Security Administration
19 or receives supplemental security income due to a mental
20 disorder as determined by the Social Security Administration
21 and receives optional state supplementation.

22 ~~(16)(17)~~ "Personal services" means direct physical
23 assistance with or supervision of the activities of daily
24 living and the self-administration of medication and other
25 similar services which the agency ~~department~~ may define by
26 rule. "Personal services" shall not be construed to mean the
27 provision of medical, nursing, dental, or mental health
28 services.

29 ~~(17)(18)~~ "Physical restraint" means a device which
30 physically limits, restricts, or deprives an individual of
31 movement or mobility, including, but not limited to, a

1 half-bed rail, a full-bed rail, a geriatric chair, and a posey
2 restraint. The term "physical restraint" shall also include
3 any device which was not specifically manufactured as a
4 restraint but which has been altered, arranged, or otherwise
5 used for this purpose. The term shall not include bandage
6 material used for the purpose of binding a wound or injury.

7 ~~(18)(19)~~ "Relative" means an individual who is the
8 father, mother, stepfather, stepmother, son, daughter,
9 brother, sister, grandmother, grandfather, great-grandmother,
10 great-grandfather, grandson, granddaughter, uncle, aunt, first
11 cousin, nephew, niece, husband, wife, father-in-law,
12 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
13 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
14 half brother, or half sister of an owner or administrator.

15 ~~(19)(20)~~ "Resident" means a person 18 years of age or
16 older, residing in and receiving care from a facility,
17 including a person receiving services pursuant to s.
18 400.553(2).

19 ~~(20)(21)~~ "Resident's representative or designee" means
20 a person other than the owner, or an agent or employee of the
21 facility, designated in writing by the resident, if legally
22 competent, to receive notice of changes in the contract
23 executed pursuant to s. 400.424; to receive notice of and to
24 participate in meetings between the resident and the facility
25 owner, administrator, or staff concerning the rights of the
26 resident; to assist the resident in contacting the ombudsman
27 council if the resident has a complaint against the facility;
28 or to bring legal action on behalf of the resident pursuant to
29 s. 400.429.

30 ~~(21)(22)~~ "Service plan" means a written plan,
31 developed and agreed upon by the resident and, if applicable,

1 | the resident's representative or designee or the resident's
2 | surrogate, guardian, or attorney in fact, if any, and the
3 | administrator or designee representing the facility, which
4 | addresses the unique physical and psychosocial needs,
5 | abilities, and personal preferences of each resident receiving
6 | extended congregate care services. The plan shall include a
7 | brief written description, in easily understood language, of
8 | what services shall be provided, who shall provide the
9 | services, when the services shall be rendered, and the
10 | purposes and benefits of the services.

11 | ~~(22)~~(23) "Shared responsibility" means exploring the
12 | options available to a resident within a facility and the
13 | risks involved with each option when making decisions
14 | pertaining to the resident's abilities, preferences, and
15 | service needs, thereby enabling the resident and, if
16 | applicable, the resident's representative or designee, or the
17 | resident's surrogate, guardian, or attorney in fact, and the
18 | facility to develop a service plan which best meets the
19 | resident's needs and seeks to improve the resident's quality
20 | of life.

21 | ~~(23)~~(24) "Supervision" means reminding residents to
22 | engage in activities of daily living and the
23 | self-administration of medication, and, when necessary,
24 | observing or providing verbal cuing to residents while they
25 | perform these activities.

26 | ~~(24)~~(25) "Supplemental security income," Title XVI of
27 | the Social Security Act, means a program through which the
28 | Federal Government guarantees a minimum monthly income to
29 | every person who is age 65 or older, or disabled, or blind and
30 | meets the income and asset requirements.

31 |

1 ~~(25)(26)~~ "Supportive services" means services designed
2 to encourage and assist aged persons or adults with
3 disabilities to remain in the least restrictive living
4 environment and to maintain their independence as long as
5 possible.

6 ~~(26)(27)~~ "Twenty-four-hour nursing supervision" means
7 services that are ordered by a physician for a resident whose
8 condition requires the supervision of a physician and
9 continued monitoring of vital signs and physical status. Such
10 services shall be: medically complex enough to require
11 constant supervision, assessment, planning, or intervention by
12 a nurse; required to be performed by or under the direct
13 supervision of licensed nursing personnel or other
14 professional personnel for safe and effective performance;
15 required on a daily basis; and consistent with the nature and
16 severity of the resident's condition or the disease state or
17 stage.

18 Section 69. Section 400.407, Florida Statutes, is
19 amended to read:

20 400.407 License required; fee, display.--

21 (1) The requirements of part II of chapter 408 apply
22 to the provision of services that necessitate licensure
23 pursuant to this part and part II of chapter 408 and to
24 entities licensed by or applying for such licensure from the
25 Agency for Health Care Administration pursuant to this part.
26 However, each applicant for licensure and licensee is exempt
27 from s. 408.810(10). A license issued by the agency is
28 required for an assisted living facility operating in this
29 state.

30 (2) Separate licenses shall be required for facilities
31 maintained in separate premises, even though operated under

1 the same management. A separate license shall not be required
2 for separate buildings on the same grounds.

3 (3) In addition to the requirements of s. 408.806,
4 each ~~Any~~ license granted by the agency must state ~~the maximum~~
5 ~~resident capacity of the facility,~~ the type of care for which
6 the license is granted, ~~the date the license is issued, the~~
7 ~~expiration date of the license, and any other information~~
8 ~~deemed necessary by the agency.~~ Licenses shall be issued for
9 one or more of the following categories of care: standard,
10 extended congregate care, limited nursing services, or limited
11 mental health.

12 (a) A standard license shall be issued to facilities
13 providing one or more of the personal services identified in
14 s. 400.402. Such facilities may also employ or contract with a
15 person licensed under part I of chapter 464 to administer
16 medications and perform other tasks as specified in s.
17 400.4255.

18 (b) An extended congregate care license shall be
19 issued to facilities providing, directly or through contract,
20 services beyond those authorized in paragraph (a), including
21 acts performed pursuant to part I of chapter 464 by persons
22 licensed thereunder, and supportive services defined by rule
23 to persons who otherwise would be disqualified from continued
24 residence in a facility licensed under this part.

25 1. In order for extended congregate care services to
26 be provided in a facility licensed under this part, the agency
27 must first determine that all requirements established in law
28 and rule are met and must specifically designate, on the
29 facility's license, that such services may be provided and
30 whether the designation applies to all or part of a facility.
31 Such designation may be made at the time of initial licensure

1 or relicensure, or upon request in writing by a licensee under
2 this part and part II of chapter 408. Notification of approval
3 or denial of such request shall be made in accordance with
4 part II of chapter 408 ~~within 90 days after receipt of such~~
5 ~~request and all necessary documentation~~. Existing facilities
6 qualifying to provide extended congregate care services must
7 have maintained a standard license and may not have been
8 subject to administrative sanctions during the previous 2
9 years, or since initial licensure if the facility has been
10 licensed for less than 2 years, for any of the following
11 reasons:

- 12 a. A class I or class II violation;
- 13 b. Three or more repeat or recurring class III
14 violations of identical or similar resident care standards as
15 specified in rule from which a pattern of noncompliance is
16 found by the agency;
- 17 c. Three or more class III violations that were not
18 corrected in accordance with the corrective action plan
19 approved by the agency;
- 20 d. Violation of resident care standards resulting in a
21 requirement to employ the services of a consultant pharmacist
22 or consultant dietitian;
- 23 e. Denial, suspension, or revocation of a license for
24 another facility under this part in which the applicant for an
25 extended congregate care license has at least 25 percent
26 ownership interest; or
- 27 f. Imposition of a moratorium on admissions or
28 initiation of injunctive proceedings.

29 2. Facilities that are licensed to provide extended
30 congregate care services shall maintain a written progress
31 report on each person who receives such services, which report

1 describes the type, amount, duration, scope, and outcome of
2 services that are rendered and the general status of the
3 resident's health. A registered nurse, or appropriate
4 designee, representing the agency shall visit such facilities
5 at least quarterly to monitor residents who are receiving
6 extended congregate care services and to determine if the
7 facility is in compliance with this part, part II of chapter
8 408, and ~~with~~ rules that relate to extended congregate care.
9 One of these visits may be in conjunction with the regular
10 survey. The monitoring visits may be provided through
11 contractual arrangements with appropriate community agencies.
12 A registered nurse shall serve as part of the team that
13 inspects such facility. The agency may waive one of the
14 required yearly monitoring visits for a facility that has been
15 licensed for at least 24 months to provide extended congregate
16 care services, if, during the inspection, the registered nurse
17 determines that extended congregate care services are being
18 provided appropriately, and if the facility has no class I or
19 class II violations and no uncorrected class III violations.
20 Before such decision is made, the agency shall consult with
21 the long-term care ombudsman council for the area in which the
22 facility is located to determine if any complaints have been
23 made and substantiated about the quality of services or care.
24 The agency may not waive one of the required yearly monitoring
25 visits if complaints have been made and substantiated.
26 3. Facilities that are licensed to provide extended
27 congregate care services shall:
28 a. Demonstrate the capability to meet unanticipated
29 resident service needs.
30 b. Offer a physical environment that promotes a
31 homelike setting, provides for resident privacy, promotes

1 resident independence, and allows sufficient congregate space
2 as defined by rule.

3 c. Have sufficient staff available, taking into
4 account the physical plant and firesafety features of the
5 building, to assist with the evacuation of residents in an
6 emergency, as necessary.

7 d. Adopt and follow policies and procedures that
8 maximize resident independence, dignity, choice, and
9 decisionmaking to permit residents to age in place to the
10 extent possible, so that moves due to changes in functional
11 status are minimized or avoided.

12 e. Allow residents or, if applicable, a resident's
13 representative, designee, surrogate, guardian, or attorney in
14 fact to make a variety of personal choices, participate in
15 developing service plans, and share responsibility in
16 decisionmaking.

17 f. Implement the concept of managed risk.

18 g. Provide, either directly or through contract, the
19 services of a person licensed pursuant to part I of chapter
20 464.

21 h. In addition to the training mandated in s. 400.452,
22 provide specialized training as defined by rule for facility
23 staff.

24 4. Facilities licensed to provide extended congregate
25 care services are exempt from the criteria for continued
26 residency as set forth in rules adopted under s. 400.441.
27 Facilities so licensed shall adopt their own requirements
28 within guidelines for continued residency set forth by ~~the~~
29 ~~department in~~ rule. However, such facilities may not serve
30 residents who require 24-hour nursing supervision. Facilities
31 licensed to provide extended congregate care services shall

1 provide each resident with a written copy of facility policies
2 governing admission and retention.

3 5. The primary purpose of extended congregate care
4 services is to allow residents, as they become more impaired,
5 the option of remaining in a familiar setting from which they
6 would otherwise be disqualified for continued residency. A
7 facility licensed to provide extended congregate care services
8 may also admit an individual who exceeds the admission
9 criteria for a facility with a standard license, if the
10 individual is determined appropriate for admission to the
11 extended congregate care facility.

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

17 7. When a facility can no longer provide or arrange
18 for services in accordance with the resident's service plan
19 and needs and the facility's policy, the facility shall make
20 arrangements for relocating the person in accordance with s.
21 400.428(1)(k).

22 8. Failure to provide extended congregate care
23 services may result in denial of extended congregate care
24 license renewal.

25 9. No later than January 1 of each year, ~~the~~
26 ~~department, in consultation with~~ the agency, shall prepare and
27 submit to the Governor, the President of the Senate, the
28 Speaker of the House of Representatives, and the chairs of
29 appropriate legislative committees, a report on the status of,
30 and recommendations related to, extended congregate care
31

1 services. The status report must include, but need not be
2 limited to, the following information:

3 a. A description of the facilities licensed to provide
4 such services, including total number of beds licensed under
5 this part.

6 b. The number and characteristics of residents
7 receiving such services.

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

10 d. An analysis of deficiencies cited during licensure
11 inspections.

12 e. The number of residents who required extended
13 congregate care services at admission and the source of
14 admission.

15 f. Recommendations for statutory or regulatory
16 changes.

17 g. The availability of extended congregate care to
18 state clients residing in facilities licensed under this part
19 and in need of additional services, and recommendations for
20 appropriations to subsidize extended congregate care services
21 for such persons.

22 h. Such other information as the department considers
23 appropriate.

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

27 1. In order for limited nursing services to be
28 provided in a facility licensed under this part, the agency
29 must first determine that all requirements established in law
30 and rule are met and must specifically designate, on the
31 facility's license, that such services may be provided. Such

1 designation may be made at the time of initial licensure or
2 relicensure, or upon request in writing by a licensee under
3 this part and part II of chapter 408. Notification of approval
4 or denial of such request shall be made in accordance with
5 part II of chapter 408 ~~within 90 days after receipt of such~~
6 ~~request and all necessary documentation~~. Existing facilities
7 qualifying to provide limited nursing services shall have
8 maintained a standard license and may not have been subject to
9 administrative sanctions that affect the health, safety, and
10 welfare of residents for the previous 2 years or since initial
11 licensure if the facility has been licensed for less than 2
12 years.

13 2. Facilities that are licensed to provide limited
14 nursing services shall maintain a written progress report on
15 each person who receives such nursing services, which report
16 describes the type, amount, duration, scope, and outcome of
17 services that are rendered and the general status of the
18 resident's health. A registered nurse representing the agency
19 shall visit such facilities at least twice a year to monitor
20 residents who are receiving limited nursing services and to
21 determine if the facility is in compliance with applicable
22 provisions of this part, part II of chapter 408, and ~~with~~
23 related rules. The monitoring visits may be provided through
24 contractual arrangements with appropriate community agencies.
25 A registered nurse shall also serve as part of the team that
26 inspects such facility.

27 3. A person who receives limited nursing services
28 under this part must meet the admission criteria established
29 by the agency for assisted living facilities. When a resident
30 no longer meets the admission criteria for a facility licensed
31 under this part, arrangements for relocating the person shall

1 be made in accordance with s. 400.428(1)(k), unless the
2 facility is licensed to provide extended congregate care
3 services.

4 (4) In accordance with s. 408.805, an applicant or
5 licensee shall pay a fee for each license application
6 submitted under this part, part II of chapter 408, and
7 applicable rules. The amount of the fee shall be established
8 by rule.

9 ~~(4)(a)~~ The biennial license fee required of a facility
10 is \$300 per license, with an additional fee of \$50 per
11 resident based on the total licensed resident capacity of the
12 facility, except that no additional fee will be assessed for
13 beds designated for recipients of optional state
14 supplementation payments provided for in s. 409.212. The total
15 fee may not exceed \$10,000, no part of which shall be returned
16 to the facility. ~~The agency shall adjust the per bed license~~
17 ~~fee and the total licensure fee annually by not more than the~~
18 ~~change in the consumer price index based on the 12 months~~
19 ~~immediately preceding the increase.~~

20 (b) In addition to the total fee assessed under
21 paragraph (a), the agency shall require facilities that are
22 licensed to provide extended congregate care services under
23 this part to pay an additional fee per licensed facility. The
24 amount of the biennial fee shall be \$400 per license, with an
25 additional fee of \$10 per resident based on the total licensed
26 resident capacity of the facility. No part of this fee shall
27 be returned to the facility. ~~The agency may adjust the per bed~~
28 ~~license fee and the annual license fee once each year by not~~
29 ~~more than the average rate of inflation for the 12 months~~
30 ~~immediately preceding the increase.~~

31

1 (c) In addition to the total fee assessed under
2 paragraph (a), the agency shall require facilities that are
3 licensed to provide limited nursing services under this part
4 to pay an additional fee per licensed facility. The amount of
5 the biennial fee shall be \$250 per license, with an additional
6 fee of \$10 per resident based on the total licensed resident
7 capacity of the facility. No part of this fee shall be
8 returned to the facility. ~~The agency may adjust the per bed~~
9 ~~license fee and the biennial license fee once each year by not~~
10 ~~more than the average rate of inflation for the 12 months~~
11 ~~immediately preceding the increase.~~

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

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

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

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

25 Section 70. Subsection (1) of section 400.4075,
26 Florida Statutes, is amended to read:

27 400.4075 Limited mental health license.--An assisted
28 living facility that serves three or more mental health
29 residents must obtain a limited mental health license.

30 (1) To obtain a limited mental health license, a
31 facility must hold a standard license as an assisted living

1 facility, must not have any current uncorrected deficiencies
2 or violations, and must ensure that, within 6 months after
3 receiving a limited mental health license, the facility
4 administrator and the staff of the facility who are in direct
5 contact with mental health residents must complete training of
6 no less than 6 hours related to their duties. Such designation
7 may be made at the time of initial licensure or relicensure,
8 or upon request in writing by a licensee under this part and
9 part II of chapter 408. Notification of approval or denial of
10 such request shall be made in accordance with this part, part
11 II of chapter 408, and applicable rules. This training will be
12 provided by or approved by the Department of Children and
13 Family Services.

14 Section 71. Section 400.408, Florida Statutes, is
15 amended to read:

16 400.408 Unlicensed facilities; referral of person for
17 residency to unlicensed facility; penalties; verification of
18 licensure status.--

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

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

27 ~~(c) Any person found guilty of violating paragraph (a)~~
28 ~~a second or subsequent time commits a felony of the second~~
29 ~~degree, punishable as provided under s. 775.082, s. 775.083,~~
30 ~~or s. 775.084. Each day of continued operation is a separate~~
31 ~~offense.~~

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

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

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

19 ~~(g) If the agency determines that an owner is~~
20 ~~operating or maintaining an assisted living facility without~~
21 ~~obtaining a license and determines that a condition exists in~~
22 ~~the facility that poses a threat to the health, safety, or~~
23 ~~welfare of a resident of the facility, the owner is subject to~~
24 ~~the same actions and fines imposed against a licensed facility~~
25 ~~as specified in ss. 400.414 and 400.419.~~

26 ~~(h) Any person aware of the operation of an unlicensed~~
27 ~~assisted living facility must report that facility to the~~
28 ~~agency. The agency shall provide to the department's elder~~
29 ~~information and referral providers a list, by county, of~~
30 ~~licensed assisted living facilities, to assist persons who are~~
31

1 ~~considering an assisted living facility placement in locating~~
2 ~~a licensed facility.~~

3 ~~(2)(i)~~ Each field office of the Agency for Health Care
4 Administration shall establish a local coordinating workgroup
5 which includes representatives of local law enforcement
6 agencies, state attorneys, the Medicaid Fraud Control Unit of
7 the Department of Legal Affairs, local fire authorities, the
8 Department of Children and Family Services, the district
9 long-term care ombudsman council, and the district human
10 rights advocacy committee to assist in identifying the
11 operation of unlicensed facilities and to develop and
12 implement a plan to ensure effective enforcement of state laws
13 relating to such facilities. The workgroup shall report its
14 findings, actions, and recommendations semiannually to the
15 Director of Health Facility Regulation of the agency.

16 ~~(3)(2)~~ It is unlawful to knowingly refer a person for
17 residency to an unlicensed assisted living facility; to an
18 assisted living facility the license of which is under denial
19 or has been suspended or revoked; or to an assisted living
20 facility that has a moratorium pursuant to part II of chapter
21 408 on admissions. Any person who violates this subsection
22 commits a noncriminal violation, punishable by a fine not
23 exceeding \$500 as provided in s. 775.083.

24 (a) Any health care practitioner, as defined in s.
25 456.001, who is aware of the operation of an unlicensed
26 facility shall report that facility to the agency. Failure to
27 report a facility that the practitioner knows or has
28 reasonable cause to suspect is unlicensed shall be reported to
29 the practitioner's licensing board.

30 (b) Any hospital or community mental health center
31 licensed under chapter 395 or chapter 394 which knowingly

1 discharges a patient or client to an unlicensed facility is
2 subject to sanction by the agency.

3 (c) Any employee of the agency or department, or the
4 Department of Children and Family Services, who knowingly
5 refers a person for residency to an unlicensed facility; to a
6 facility the license of which is under denial or has been
7 suspended or revoked; or to a facility that has a moratorium
8 pursuant to part II of chapter 408 ~~on admissions~~ is subject to
9 disciplinary action by the agency or department, or the
10 Department of Children and Family Services.

11 (d) The employer of any person who is under contract
12 with the agency or department, or the Department of Children
13 and Family Services, and who knowingly refers a person for
14 residency to an unlicensed facility; to a facility the license
15 of which is under denial or has been suspended or revoked; or
16 to a facility that has a moratorium pursuant to part II of
17 chapter 408 ~~on admissions~~ shall be fined and required to
18 prepare a corrective action plan designed to prevent such
19 referrals.

20 (e) The agency shall provide the department and the
21 Department of Children and Family Services with a list of
22 licensed facilities within each county and shall update the
23 list at least quarterly.

24 (f) At least annually, the agency shall notify, in
25 appropriate trade publications, physicians licensed under
26 chapter 458 or chapter 459, hospitals licensed under chapter
27 395, nursing home facilities licensed under part II of this
28 chapter, and employees of the agency or the department, or the
29 Department of Children and Family Services, who are
30 responsible for referring persons for residency, that it is
31 unlawful to knowingly refer a person for residency to an

1 | unlicensed assisted living facility and shall notify them of
2 | the penalty for violating such prohibition. The department and
3 | the Department of Children and Family Services shall, in turn,
4 | notify service providers under contract to the respective
5 | departments who have responsibility for resident referrals to
6 | facilities. Further, the notice must direct each noticed
7 | facility and individual to contact the appropriate agency
8 | office in order to verify the licensure status of any facility
9 | prior to referring any person for residency. Each notice must
10 | include the name, telephone number, and mailing address of the
11 | appropriate office to contact.

12 | Section 72. Section 400.411, Florida Statutes, is
13 | amended to read:

14 | 400.411 Initial application for license; provisional
15 | license.--

16 | (1) Each applicant for licensure must comply with all
17 | provisions of part II of chapter 408 and the following:

18 | ~~Application for a license shall be made to the agency on forms~~
19 | ~~furnished by it and shall be accompanied by the appropriate~~
20 | ~~license fee.~~

21 | ~~(2) The applicant may be an individual owner, a~~
22 | ~~corporation, a partnership, a firm, an association, or a~~
23 | ~~governmental entity.~~

24 | ~~(3) The application must be signed by the applicant~~
25 | ~~under oath and must contain the following:~~

26 | ~~(a) The name, address, date of birth, and social~~
27 | ~~security number of the applicant and the name by which the~~
28 | ~~facility is to be known. If the applicant is a firm,~~
29 | ~~partnership, or association, the application shall contain the~~
30 | ~~name, address, date of birth, and social security number of~~
31 | ~~every member thereof. If the applicant is a corporation, the~~

1 ~~application shall contain the corporation's name and address;~~
2 ~~the name, address, date of birth, and social security number~~
3 ~~of each of its directors and officers; and the name and~~
4 ~~address of each person having at least a 5 percent ownership~~
5 ~~interest in the corporation.~~

6 ~~(b) The name and address of any professional service,~~
7 ~~firm, association, partnership, or corporation that is to~~
8 ~~provide goods, leases, or services to the facility if a~~
9 ~~5 percent or greater ownership interest in the service, firm,~~
10 ~~association, partnership, or corporation is owned by a person~~
11 ~~whose name must be listed on the application under paragraph~~
12 ~~(a).~~

13 ~~(c) The name and address of any long term care~~
14 ~~facility with which the applicant, administrator, or financial~~
15 ~~officer has been affiliated through ownership or employment~~
16 ~~within 5 years of the date of this license application; and a~~
17 ~~signed affidavit disclosing any financial or ownership~~
18 ~~interest that the applicant, or any person listed in paragraph~~
19 ~~(a), holds or has held within the last 5 years in any facility~~
20 ~~licensed under this part, or in any other entity licensed by~~
21 ~~this state or another state to provide health or residential~~
22 ~~care, which facility or entity closed or ceased to operate as~~
23 ~~a result of financial problems, or has had a receiver~~
24 ~~appointed or a license denied, suspended or revoked, or was~~
25 ~~subject to a moratorium on admissions, or has had an~~
26 ~~injunctive proceeding initiated against it.~~

27 ~~(d) A description and explanation of any exclusions,~~
28 ~~permanent suspensions, or terminations of the applicant from~~
29 ~~the Medicare or Medicaid programs. Proof of compliance with~~
30 ~~disclosure of ownership and control interest requirements of~~
31

1 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
2 ~~this submission.~~

3 ~~(e) The names and addresses of persons of whom the~~
4 ~~agency may inquire as to the character, reputation, and~~
5 ~~financial responsibility of the owner and, if different from~~
6 ~~the applicant, the administrator and financial officer.~~

7 ~~(a)(f)~~ Identity Identification of all other homes or
8 facilities, including the addresses and the license or
9 licenses under which they operate, if applicable, which are
10 currently operated by the applicant or administrator and which
11 provide housing, meals, and personal services to residents.

12 ~~(b)(g)~~ Provide the location of the facility for which
13 a license is sought and documentation, signed by the
14 appropriate local government official, which states that the
15 applicant has met local zoning requirements.

16 ~~(c)(h)~~ Provide the name, address, date of birth,
17 social security number, education, and experience of the
18 administrator, if different from the applicant.

19 ~~(4) The applicant shall furnish satisfactory proof of~~
20 ~~financial ability to operate and conduct the facility in~~
21 ~~accordance with the requirements of this part. A certificate~~
22 ~~of authority, pursuant to chapter 651, may be provided as~~
23 ~~proof of financial ability.~~

24 ~~(5) If the applicant is a continuing care facility~~
25 ~~certified under chapter 651, a copy of the facility's~~
26 ~~certificate of authority must be provided.~~

27 ~~(2)(6)~~ In addition to the requirements of s. 408.810,
28 the applicant shall provide proof of liability insurance as
29 defined in s. 624.605.

30
31

1 ~~(7) If the applicant is a community residential home,~~
2 ~~the applicant must provide proof that it has met the~~
3 ~~requirements specified in chapter 419.~~

4 ~~(8) The applicant must provide the agency with proof~~
5 ~~of legal right to occupy the property.~~

6 ~~(3)(9) The applicant must furnish proof that the~~
7 ~~facility has received a satisfactory firesafety inspection.~~

8 The local authority having jurisdiction or the State Fire
9 Marshal must conduct the inspection within 30 days after
10 written request by the applicant.

11 ~~(4)(10) The applicant must furnish documentation of a~~
12 ~~satisfactory sanitation inspection of the facility by the~~
13 ~~county health department.~~

14 ~~(11) The applicant must furnish proof of compliance~~
15 ~~with level 2 background screening as required under s.~~
16 ~~400.4174.~~

17 ~~(5)(12) A provisional license may be issued to an~~
18 ~~applicant making initial application for licensure or making~~
19 ~~application for a change of ownership. A provisional license~~
20 ~~shall be limited in duration to a specific period of time not~~
21 ~~to exceed 6 months, as determined by the agency.~~

22 ~~(6)(13) A county or municipality may not issue an~~
23 ~~occupational license that is being obtained for the purpose of~~
24 ~~operating a facility regulated under this part without first~~
25 ~~ascertaining that the applicant has been licensed to operate~~
26 ~~such facility at the specified location or locations by the~~
27 ~~agency. The agency shall furnish to local agencies~~
28 ~~responsible for issuing occupational licenses sufficient~~
29 ~~instruction for making such determinations.~~

30 Section 73. Section 400.412, Florida Statutes, is
31 amended to read:

1 400.412 Sale or transfer of ownership of a
2 facility.--It is the intent of the Legislature to protect the
3 rights of the residents of an assisted living facility when
4 the facility is sold or the ownership thereof is transferred.
5 Therefore, in addition to the requirements of part II of
6 chapter 408, whenever a facility is sold or the ownership
7 thereof is transferred, including leasing:

8 ~~(1) The transferee shall make application to the~~
9 ~~agency for a new license at least 60 days before the date of~~
10 ~~transfer of ownership. The application must comply with the~~
11 ~~provisions of s. 400.411.~~

12 ~~(2)(a) The transferor shall notify the agency in~~
13 ~~writing at least 60 days before the date of transfer of~~
14 ~~ownership.~~

15 ~~(1)(b)~~ The transferee new owner shall notify the
16 residents, in writing, of the change transfer of ownership
17 within 7 days after ~~of his or her~~ receipt of the new license.

18 ~~(3) The transferor shall be responsible and liable~~
19 ~~for:~~

20 ~~(a) The lawful operation of the facility and the~~
21 ~~welfare of the residents domiciled in the facility until the~~
22 ~~date the transferee is licensed by the agency.~~

23 ~~(b) Any and all penalties imposed against the facility~~
24 ~~for violations occurring before the date of transfer of~~
25 ~~ownership unless the penalty imposed is a moratorium on~~
26 ~~admissions or denial of licensure. The moratorium on~~
27 ~~admissions or denial of licensure remains in effect after the~~
28 ~~transfer of ownership, unless the agency has approved the~~
29 ~~transferee's corrective action plan or the conditions which~~
30 ~~created the moratorium or denial have been corrected, and may~~
31

1 ~~be grounds for denial of license to the transferee in~~
2 ~~accordance with chapter 120.~~

3 ~~(c) Any outstanding liability to the state, unless the~~
4 ~~transferee has agreed, as a condition of sale or transfer, to~~
5 ~~accept the outstanding liabilities and to guarantee payment~~
6 ~~therefor; except that, if the transferee fails to meet these~~
7 ~~obligations, the transferor shall remain liable for the~~
8 ~~outstanding liability.~~

9 ~~(2)(4)~~ The transferor of a facility the license of
10 which is denied pending an administrative hearing shall, as a
11 part of the written change-of-ownership ~~transfer of ownership~~
12 contract, advise the transferee that a plan of correction must
13 be submitted by the transferee and approved by the agency at
14 least 7 days before the change ~~transfer~~ of ownership and that
15 failure to correct the condition which resulted in the
16 moratorium pursuant to part II of chapter 408 ~~on admissions~~ or
17 denial of licensure is grounds for denial of the transferee's
18 license.

19 ~~(5) The transferee must provide the agency with proof~~
20 ~~of legal right to occupy the property before a license may be~~
21 ~~issued. Proof may include, but is not limited to, copies of~~
22 ~~warranty deeds, or copies of lease or rental agreements,~~
23 ~~contracts for deeds, quitclaim deeds, or other such~~
24 ~~documentation.~~

25 Section 74. Section 400.414, Florida Statutes, is
26 amended to read:

27 400.414 Denial, revocation, or suspension of license;
28 moratorium; imposition of administrative fine; grounds.--

29 (1) The agency may deny, revoke, and ~~or~~ suspend any
30 license issued under this part, impose a moratorium, and ~~or~~
31 impose an administrative fine in the manner provided in

1 chapter 120, for any of the following actions by an assisted
2 living facility, for the actions of any person subject to
3 level 2 background screening under s. 400.4174, or for the
4 actions of any facility employee for the violation of any
5 provision of this part, part II of chapter 408, or applicable
6 rules and:

7 (a) An intentional or negligent act seriously
8 affecting the health, safety, or welfare of a resident of the
9 facility.

10 (b) The determination by the agency that the owner
11 lacks the financial ability to provide continuing adequate
12 care to residents.

13 (c) Misappropriation or conversion of the property of
14 a resident of the facility.

15 (d) Failure to follow the criteria and procedures
16 provided under part I of chapter 394 relating to the
17 transportation, voluntary admission, and involuntary
18 examination of a facility resident.

19 (e) A citation of any of the following deficiencies as
20 defined in s. 400.419:

- 21 1. One or more cited class I deficiencies.
- 22 2. Three or more cited class II deficiencies.
- 23 3. Five or more cited class III deficiencies that have
24 been cited on a single survey and have not been corrected
25 within the times specified.

26 (f) A determination that a person subject to level 2
27 background screening under s. 400.4174(1) does not meet the
28 screening standards of s. 435.04 or that the facility is
29 retaining an employee subject to level 1 background screening
30 standards under s. 400.4174(2) who does not meet the screening
31

1 standards of s. 435.03 and for whom exemptions from
2 disqualification have not been provided by the agency.

3 (g) A determination that an employee, volunteer,
4 administrator, or owner, or person who otherwise has access to
5 the residents of a facility does not meet the criteria
6 specified in s. 435.03(2), and the owner or administrator has
7 not taken action to remove the person. Exemptions from
8 disqualification may be granted as set forth in s. 435.07. No
9 administrative action may be taken against the facility if the
10 person is granted an exemption.

11 ~~(h) Violation of a moratorium.~~

12 ~~(i) Failure of the license applicant, the licensee
13 during relicensure, or a licensee that holds a provisional
14 license to meet the minimum license requirements of this part,
15 or related rules, at the time of license application or
16 renewal.~~

17 ~~(j) A fraudulent statement or omission of any material
18 fact on an application for a license or any other document
19 required by the agency, including the submission of a license
20 application that conceals the fact that any board member,
21 officer, or person owning 5 percent or more of the facility
22 may not meet the background screening requirements of s.
23 400.4174, or that the applicant has been excluded, permanently
24 suspended, or terminated from the Medicaid or Medicare
25 programs.~~

26 (h)(k) An intentional or negligent life-threatening
27 act in violation of the uniform firesafety standards for
28 assisted living facilities or other firesafety standards that
29 threatens the health, safety, or welfare of a resident of a
30 facility, as communicated to the agency by the local authority
31 having jurisdiction or the State Fire Marshal.

1 ~~(1) Exclusion, permanent suspension, or termination~~
2 ~~from the Medicare or Medicaid programs.~~

3 ~~(i)(m)~~ Knowingly operating any unlicensed facility or
4 providing without a license any service that must be licensed
5 under this chapter.

6 ~~(j)(n)~~ Any act constituting a ground upon which
7 application for a license may be denied.

8
9 ~~Administrative proceedings challenging agency action under~~
10 ~~this subsection shall be reviewed on the basis of the facts~~
11 ~~and conditions that resulted in the agency action.~~

12 (2) Upon notification by the local authority having
13 jurisdiction or by the State Fire Marshal, the agency may deny
14 or revoke the license of an assisted living facility that
15 fails to correct cited fire code violations that affect or
16 threaten the health, safety, or welfare of a resident of a
17 facility.

18 (3) The agency may deny a license to any applicant or
19 controlling interest, as defined in part II of chapter 408,
20 ~~which to any officer or board member of an applicant who is a~~
21 ~~firm, corporation, partnership, or association or who owns 5~~
22 ~~percent or more of the facility, if the applicant, officer, or~~
23 ~~board member~~ has or had a 25-percent or greater financial or
24 ownership interest in any other facility licensed under this
25 part, or in any entity licensed by this state or another state
26 to provide health or residential care, which facility or
27 entity during the 5 years prior to the application for a
28 license closed due to financial inability to operate; had a
29 receiver appointed or a license denied, suspended, or revoked;
30 was subject to a moratorium pursuant to part II of chapter 408
31

1 ~~on admissions~~; had an injunctive proceeding initiated against
2 it; or has an outstanding fine assessed under this chapter.

3 (4) The agency shall deny or revoke the license of an
4 assisted living facility that has two or more class I
5 violations that are similar or identical to violations
6 identified by the agency during a survey, inspection,
7 monitoring visit, or complaint investigation occurring within
8 the previous 2 years.

9 (5) An action taken by the agency to suspend, deny, or
10 revoke a facility's license under this part, in which the
11 agency claims that the facility owner or an employee of the
12 facility has threatened the health, safety, or welfare of a
13 resident of the facility be heard by the Division of
14 Administrative Hearings of the Department of Management
15 Services within 120 days after receipt of the facility's
16 request for a hearing, unless that time limitation is waived
17 by both parties. The administrative law judge must render a
18 decision within 30 days after receipt of a proposed
19 recommended order.

20 (6) The agency shall provide to the Division of Hotels
21 and Restaurants of the Department of Business and Professional
22 Regulation, on a monthly basis, a list of those assisted
23 living facilities that have had their licenses denied,
24 suspended, or revoked or that are involved in an appellate
25 proceeding pursuant to s. 120.60 related to the denial,
26 suspension, or revocation of a license.

27 (7) Agency notification of a license suspension or
28 revocation, or denial of a license renewal, shall be posted
29 and visible to the public at the facility.
30
31

1 ~~(8) The agency may issue a temporary license pending~~
2 ~~final disposition of a proceeding involving the suspension or~~
3 ~~revocation of an assisted living facility license.~~

4 Section 75. Section 400.415, Florida Statutes, is
5 repealed.

6 Section 76. Section 400.417, Florida Statutes, is
7 amended to read:

8 400.417 Expiration of license; renewal; conditional
9 license.--

10 ~~(1) Biennial licenses, unless sooner suspended or~~
11 ~~revoked, shall expire 2 years from the date of issuance.~~
12 Limited nursing, extended congregate care, and limited mental
13 health licenses shall expire at the same time as the
14 facility's standard license, regardless of when issued. ~~The~~
15 ~~agency shall notify the facility at least 120 days prior to~~
16 ~~expiration that a renewal license is necessary to continue~~
17 ~~operation. The notification must be provided electronically or~~
18 ~~by mail delivery. Ninety days prior to the expiration date, an~~
19 ~~application for renewal shall be submitted to the agency. Fees~~
20 ~~must be prorated. The failure to file a timely renewal~~
21 ~~application shall result in a late fee charged to the facility~~
22 ~~in an amount equal to 50 percent of the current fee.~~

23 (2) A license shall be renewed in accordance with part
24 II of chapter 408 within 90 days upon the timely filing of an
25 ~~application on forms furnished by the agency~~ and the provision
26 of satisfactory proof of ability to operate and conduct the
27 facility in accordance with the requirements of this part and
28 adopted rules, including proof that the facility has received
29 a satisfactory firesafety inspection, conducted by the local
30 authority having jurisdiction or the State Fire Marshal,
31

1 within the preceding 12 months ~~and an affidavit of compliance~~
2 ~~with the background screening requirements of s. 400.4174.~~

3 (3) In addition to the requirements of part II of
4 chapter 408, ~~An applicant for renewal of a license who has~~
5 ~~complied with the provisions of s. 400.411 with respect to~~
6 ~~proof of financial ability to operate shall not be required to~~
7 ~~provide further proof unless the facility or any other~~
8 ~~facility owned or operated in whole or in part by the same~~
9 ~~person has demonstrated financial instability as provided~~
10 ~~under s. 400.447(2) or unless the agency suspects that the~~
11 ~~facility is not financially stable as a result of the annual~~
12 ~~survey or complaints from the public or a report from the~~
13 ~~State Long Term Care Ombudsman Council.~~ each facility must
14 report to the agency any adverse court action concerning the
15 facility's financial viability, within 7 days after its
16 occurrence. The agency shall have access to books, records,
17 and any other financial documents maintained by the facility
18 to the extent necessary to determine the facility's financial
19 stability. ~~A license for the operation of a facility shall not~~
20 ~~be renewed if the licensee has any outstanding fines assessed~~
21 ~~pursuant to this part which are in final order status.~~

22 ~~(4) A licensee against whom a revocation or suspension~~
23 ~~proceeding is pending at the time of license renewal may be~~
24 ~~issued a conditional license effective until final disposition~~
25 ~~by the agency. If judicial relief is sought from the final~~
26 ~~disposition, the court having jurisdiction may issue a~~
27 ~~conditional license for the duration of the judicial~~
28 ~~proceeding.~~

29 ~~(4)(5)~~ A conditional license may be issued to an
30 applicant for license renewal if the applicant fails to meet
31 all standards and requirements for licensure. A conditional

1 license issued under this subsection shall be limited in
2 duration to a specific period of time not to exceed 6 months,
3 as determined by the agency, and shall be accompanied by an
4 agency-approved plan of correction.

5 ~~(5)(6)~~ When an extended care or limited nursing
6 license is requested during a facility's biennial license
7 period, the fee shall be prorated in order to permit the
8 additional license to expire at the end of the biennial
9 license period. The fee shall be calculated as of the date the
10 additional license application is received by the agency.

11 ~~(6)(7)~~ The agency ~~department~~ may by rule establish
12 renewal procedures, identify forms, and specify documentation
13 necessary to administer this section and part II of chapter
14 408.

15 Section 77. Section 400.4174, Florida Statutes, is
16 amended to read:

17 400.4174 Background screening; exemptions.--

18 ~~(1)(a) Level 2 background screening must be conducted~~
19 ~~on each of the following persons, who shall be considered~~
20 ~~employees for the purposes of conducting screening under~~
21 ~~chapter 435:~~

22 ~~1. The facility owner if an individual, the~~
23 ~~administrator, and the financial officer.~~

24 ~~2. An officer or board member if the facility owner is~~
25 ~~a firm, corporation, partnership, or association, or any~~
26 ~~person owning 5 percent or more of the facility if the agency~~
27 ~~has probable cause to believe that such person has been~~
28 ~~convicted of any offense prohibited by s. 435.04. For each~~
29 ~~officer, board member, or person owning 5 percent or more who~~
30 ~~has been convicted of any such offense, the facility shall~~
31 ~~submit to the agency a description and explanation of the~~

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

13 ~~(b) Proof of compliance with level 2 screening~~
14 ~~standards which has been submitted within the previous 5 years~~
15 ~~to meet any facility or professional licensure requirements of~~
16 ~~the agency or the Department of Health satisfies the~~
17 ~~requirements of this subsection, provided that such proof is~~
18 ~~accompanied, under penalty of perjury, by an affidavit of~~
19 ~~compliance with the provisions of chapter 435. Proof of~~
20 ~~compliance with the background screening requirements of the~~
21 ~~Financial Services Commission and the Office of Insurance~~
22 ~~Regulation for applicants for a certificate of authority to~~
23 ~~operate a continuing care retirement community under chapter~~
24 ~~651, submitted within the last 5 years, satisfies the~~
25 ~~Department of Law Enforcement and Federal Bureau of~~
26 ~~Investigation portions of a level 2 background check.~~

27 ~~(c) The agency may grant a provisional license to a~~
28 ~~facility applying for an initial license when each individual~~
29 ~~required by this subsection to undergo screening has completed~~
30 ~~the Department of Law Enforcement background checks, but has~~
31 ~~not yet received results from the Federal Bureau of~~

1 ~~Investigation, or when a request for an exemption from~~
2 ~~disqualification has been submitted to the agency pursuant to~~
3 ~~s. 435.07, but a response has not been issued.~~

4 ~~(2)~~ The owner or administrator of an assisted living
5 facility must conduct level 1 background screening, as set
6 forth in chapter 435, on all employees hired on or after
7 October 1, 1998, who perform personal services as defined in
8 s. 400.402(17). The agency may exempt an individual from
9 employment disqualification as set forth in chapter 435. Such
10 persons shall be considered as having met this requirement if:

11 (1)(a) Proof of compliance with level 1 screening
12 requirements obtained to meet any professional license
13 requirements in this state is provided and accompanied, under
14 penalty of perjury, by a copy of the person's current
15 professional license and an affidavit of current compliance
16 with the background screening requirements.

17 (2)(b) The person required to be screened has been
18 continuously employed in the same type of occupation for which
19 the person is seeking employment without a breach in service
20 which exceeds 180 days, and proof of compliance with the level
21 1 screening requirement which is no more than 2 years old is
22 provided. Proof of compliance shall be provided directly from
23 one employer or contractor to another, and not from the person
24 screened. Upon request, a copy of screening results shall be
25 provided by the employer retaining documentation of the
26 screening to the person screened.

27 (3)(c) The person required to be screened is employed
28 by a corporation or business entity or related corporation or
29 business entity that owns, operates, or manages more than one
30 facility or agency licensed under this chapter, and for whom a
31

1 level 1 screening was conducted by the corporation or business
2 entity as a condition of initial or continued employment.

3 Section 78. Section 400.4176, Florida Statutes, is
4 amended to read:

5 400.4176 Notice of change of administrator.--If,
6 during the period for which a license is issued, the owner
7 changes administrators, the owner must notify the agency of
8 the change within 10 days and provide documentation within 90
9 days that the new administrator has completed the applicable
10 core educational requirements under s. 400.452. ~~Background~~
11 ~~screening shall be completed on any new administrator as~~
12 ~~specified in s. 400.4174.~~

13 Section 79. Subsection (7) of section 400.4178,
14 Florida Statutes, is repealed.

15 Section 80. Section 400.418, Florida Statutes, is
16 amended to read:

17 400.418 Disposition of fees and administrative
18 fines.--

19 ~~(1) Income from license fees, inspection fees, late~~
20 ~~fees, and administrative fines collected under this part~~
21 ~~generated pursuant to ss. 400.407, 400.408, 400.417, 400.419,~~
22 ~~and 400.431 shall be deposited in the Health Care Trust Fund~~
23 ~~administered by the agency. Such funds shall be directed to~~
24 and used by the agency for the following purposes:

25 ~~(1)(a)~~ Up to 50 percent of the trust funds accrued
26 each fiscal year under this part may be used to offset the
27 expenses of receivership, pursuant to s. 400.422, if the court
28 determines that the income and assets of the facility are
29 insufficient to provide for adequate management and operation.

30 ~~(2)(b)~~ An amount of \$5,000 of the trust funds accrued
31 each year under this part shall be allocated to pay for

1 inspection-related physical and mental health examinations
2 requested by the agency pursuant to s. 400.426 for residents
3 who are either recipients of supplemental security income or
4 have monthly incomes not in excess of the maximum combined
5 federal and state cash subsidies available to supplemental
6 security income recipients, as provided for in s. 409.212.
7 Such funds shall only be used where the resident is ineligible
8 for Medicaid.

9 ~~(3)(c)~~ Any trust funds accrued each year under this
10 part and not used for the purposes specified in paragraphs (a)
11 and (b) shall be used to offset the costs of the licensure
12 program, ~~including the costs of conducting background~~
13 ~~investigations,~~ verifying information submitted, defraying the
14 costs of processing the names of applicants, and conducting
15 inspections and monitoring visits pursuant to this part and
16 part II of chapter 408.

17 ~~(2) Income from fees generated pursuant to s.~~
18 ~~400.441(5) shall be deposited in the Health Care Trust Fund~~
19 ~~and used to offset the costs of printing and postage.~~

20 Section 81. Section 400.419, Florida Statutes, is
21 amended to read:

22 400.419 Violations; imposition of administrative
23 fines; grounds.--

24 (1) The agency shall impose an administrative fine in
25 the manner provided in chapter 120 for the violation of any
26 provision of this part, part II of chapter 408, and applicable
27 rules any of the actions or violations as set forth within
28 ~~this section~~ by an assisted living facility, for the actions
29 of any person subject to level 2 background screening under s.
30 400.4174, for the actions of any facility employee, or for an
31

1 intentional or negligent act seriously affecting the health,
2 safety, or welfare of a resident of the facility.

3 (2) Each violation of this part and adopted rules
4 shall be classified according to the nature of the violation
5 and the gravity of its probable effect on facility residents.
6 The agency shall indicate the classification on the written
7 notice of the violation as follows:

8 (a) Class "I" violations are those conditions or
9 occurrences related to the operation and maintenance of a
10 facility or to the personal care of residents which the agency
11 determines present an imminent danger to the residents or
12 guests of the facility or a substantial probability that death
13 or serious physical or emotional harm would result therefrom.
14 The condition or practice constituting a class I violation
15 shall be abated or eliminated within 24 hours, unless a fixed
16 period, as determined by the agency, is required for
17 correction. The agency shall impose an administrative fine for
18 a cited class I violation in an amount not less than \$5,000
19 and not exceeding \$10,000 for each violation. A fine may be
20 levied notwithstanding the correction of the violation.

21 (b) Class "II" violations are those conditions or
22 occurrences related to the operation and maintenance of a
23 facility or to the personal care of residents which the agency
24 determines directly threaten the physical or emotional health,
25 safety, or security of the facility residents, other than
26 class I violations. The agency shall impose an administrative
27 fine for a cited class II violation in an amount not less than
28 \$1,000 and not exceeding \$5,000 for each violation. A fine
29 shall be levied notwithstanding the correction of the
30 violation.

31

1 (c) Class "III" violations are those conditions or
2 occurrences related to the operation and maintenance of a
3 facility or to the personal care of residents which the agency
4 determines indirectly or potentially threaten the physical or
5 emotional health, safety, or security of facility residents,
6 other than class I or class II violations. The agency shall
7 impose an administrative fine for a cited class III violation
8 in an amount not less than \$500 and not exceeding \$1,000 for
9 each violation. A citation for a class III violation must
10 specify the time within which the violation is required to be
11 corrected. If a class III violation is corrected within the
12 time specified, no fine may be imposed, unless it is a
13 repeated offense.

14 (d) Class "IV" violations are those conditions or
15 occurrences related to the operation and maintenance of a
16 building or to required reports, forms, or documents that do
17 not have the potential of negatively affecting residents.
18 These violations are of a type that the agency determines do
19 not threaten the health, safety, or security of residents of
20 the facility. The agency shall impose an administrative fine
21 for a cited class IV violation in an amount not less than \$100
22 and not exceeding \$200 for each violation. A citation for a
23 class IV violation must specify the time within which the
24 violation is required to be corrected. If a class IV violation
25 is corrected within the time specified, no fine shall be
26 imposed. Any class IV violation that is corrected during the
27 time an agency survey is being conducted will be identified as
28 an agency finding and not as a violation.

29 (3) For purposes of this section, in determining if a
30 penalty is to be imposed and in fixing the amount of the fine,
31 the agency shall consider the following factors:

1 (a) The gravity of the violation, including the
2 probability that death or serious physical or emotional harm
3 to a resident will result or has resulted, the severity of the
4 action or potential harm, and the extent to which the
5 provisions of the applicable laws or rules were violated.

6 (b) Actions taken by the owner or administrator to
7 correct violations.

8 (c) Any previous violations.

9 (d) The financial benefit to the facility of
10 committing or continuing the violation.

11 (e) The licensed capacity of the facility.

12 (4) Each day of continuing violation after the date
13 fixed for termination of the violation, as ordered by the
14 agency, constitutes an additional, separate, and distinct
15 violation.

16 (5) Any action taken to correct a violation shall be
17 documented in writing by the owner or administrator of the
18 facility and verified through followup visits by agency
19 personnel. The agency may impose a fine and, in the case of an
20 owner-operated facility, revoke or deny a facility's license
21 when a facility administrator fraudulently misrepresents
22 action taken to correct a violation.

23 ~~(6) For fines that are upheld following administrative~~
24 ~~or judicial review, the violator shall pay the fine, plus~~
25 ~~interest at the rate as specified in s. 55.03, for each day~~
26 ~~beyond the date set by the agency for payment of the fine.~~

27 ~~(7) Any unlicensed facility that continues to operate~~
28 ~~after agency notification is subject to a \$1,000 fine per day.~~

29 ~~(8) Any licensed facility whose owner or administrator~~
30 ~~concurrently operates an unlicensed facility shall be subject~~
31 ~~to an administrative fine of \$5,000 per day.~~

1 ~~(9) Any facility whose owner fails to apply for a~~
2 ~~change of ownership license in accordance with s. 400.412 and~~
3 ~~operates the facility under the new ownership is subject to a~~
4 ~~fine of \$5,000.~~

5 (6)~~(10)~~ In addition to any administrative fines
6 imposed, the agency may assess a survey fee, equal to the
7 lesser of one half of the facility's biennial license and bed
8 fee or \$500, to cover the cost of conducting initial complaint
9 investigations that result in the finding of a violation that
10 was the subject of the complaint or monitoring visits
11 conducted under s. 400.428(3)(c) to verify the correction of
12 the violations.

13 (7)~~(11)~~ The agency, as an alternative to or in
14 conjunction with an administrative action against a facility
15 for violations of this part and adopted rules, shall make a
16 reasonable attempt to discuss each violation and recommended
17 corrective action with the owner or administrator of the
18 facility, prior to written notification. The agency, instead
19 of fixing a period within which the facility shall enter into
20 compliance with standards, may request a plan of corrective
21 action from the facility which demonstrates a good faith
22 effort to remedy each violation by a specific date, subject to
23 the approval of the agency.

24 ~~(12) Administrative fines paid by any facility under~~
25 ~~this section shall be deposited into the Health Care Trust~~
26 ~~Fund and expended as provided in s. 400.418.~~

27 (8)~~(13)~~ The agency shall develop and disseminate an
28 annual list of all facilities sanctioned or fined \$5,000 or
29 more for violations of state standards, the number and class
30 of violations involved, the penalties imposed, and the current
31 status of cases. The list shall be disseminated, at no charge,

1 to the Department of Elderly Affairs, the Department of
2 Health, the Department of Children and Family Services, the
3 area agencies on aging, the Florida Statewide Advocacy
4 Council, and the state and local ombudsman councils. The
5 Department of Children and Family Services shall disseminate
6 the list to service providers under contract to the department
7 who are responsible for referring persons to a facility for
8 residency. The agency may charge a fee commensurate with the
9 cost of printing and postage to other interested parties
10 requesting a copy of this list.

11 Section 82. Section 400.421, Florida Statutes, is
12 repealed.

13 Section 83. Subsection (10) of section 400.423,
14 Florida Statutes, is amended to read:

15 400.423 Internal risk management and quality assurance
16 program; adverse incidents and reporting requirements.--

17 (10) The agency ~~Department of Elderly Affairs~~ may
18 adopt rules necessary to administer this section.

19 Section 84. Subsections (3) and (8) of section
20 400.424, Florida Statutes, are amended to read:

21 400.424 Contracts.--

22 (3)(a) The contract shall include a refund policy to
23 be implemented at the time of a resident's transfer,
24 discharge, or death. The refund policy shall provide that the
25 resident or responsible party is entitled to a prorated refund
26 based on the daily rate for any unused portion of payment
27 beyond the termination date after all charges, including the
28 cost of damages to the residential unit resulting from
29 circumstances other than normal use, have been paid to the
30 licensee. For the purpose of this paragraph, the termination
31 date shall be the date the unit is vacated by the resident and

1 | cleared of all personal belongings. If the amount of
2 | belongings does not preclude renting the unit, the facility
3 | may clear the unit and charge the resident or his or her
4 | estate for moving and storing the items at a rate equal to the
5 | actual cost to the facility, not to exceed 20 percent of the
6 | regular rate for the unit, provided that 14 days' advance
7 | written notification is given. If the resident's possessions
8 | are not claimed within 45 days after notification, the
9 | facility may dispose of them. The contract shall also specify
10 | any other conditions under which claims will be made against
11 | the refund due the resident. Except in the case of death or a
12 | discharge due to medical reasons, the refunds shall be
13 | computed in accordance with the notice of relocation
14 | requirements specified in the contract. However, a resident
15 | may not be required to provide the licensee with more than 30
16 | days' notice of termination. If after a contract is
17 | terminated, the facility intends to make a claim against a
18 | refund due the resident, the facility shall notify the
19 | resident or responsible party in writing of the claim and
20 | shall provide said party with a reasonable time period of no
21 | less than 14 calendar days to respond. The facility shall
22 | provide a refund to the resident or responsible party within
23 | 45 days after the transfer, discharge, or death of the
24 | resident. The agency shall impose a fine upon a facility that
25 | fails to comply with the refund provisions of the paragraph,
26 | which fine shall be equal to three times the amount due to the
27 | resident and is not subject to s. 400.419(3). One-half of the
28 | fine shall be remitted to the resident or his or her estate,
29 | and the other half to the Health Care Trust Fund to be used
30 | for the purpose specified in s. 400.418.

31 |

1 (b) If a licensee agrees to reserve a bed for a
2 resident who is admitted to a medical facility, including, but
3 not limited to, a nursing home, health care facility, or
4 psychiatric facility, the resident or his or her responsible
5 party shall notify the licensee of any change in status that
6 would prevent the resident from returning to the facility.
7 Until such notice is received, the agreed-upon daily rate may
8 be charged by the licensee.

9 (c) The purpose of any advance payment and a refund
10 policy for such payment, including any advance payment for
11 housing, meals, or personal services, shall be covered in the
12 contract.

13 (8) The agency ~~department~~ may by rule clarify terms,
14 establish procedures, clarify refund policies and contract
15 provisions, and specify documentation as necessary to
16 administer this section.

17 Section 85. Subsection (3) of section 400.4255,
18 Florida Statutes, is amended to read:

19 400.4255 Use of personnel; emergency care.--

20 (3) Facility staff may withhold or withdraw
21 cardiopulmonary resuscitation if presented with an order not
22 to resuscitate executed pursuant to s. 401.45. The agency
23 ~~department~~ shall adopt rules providing for the implementation
24 of such orders. Facility staff and facilities shall not be
25 subject to criminal prosecution or civil liability, nor be
26 considered to have engaged in negligent or unprofessional
27 conduct, for withholding or withdrawing cardiopulmonary
28 resuscitation pursuant to such an order and applicable rules
29 ~~adopted by the department~~. The absence of an order to
30 resuscitate executed pursuant to s. 401.45 does not preclude a
31

1 physician from withholding or withdrawing cardiopulmonary
2 resuscitation as otherwise permitted by law.

3 Section 86. Subsection (6) of section 400.4256,
4 Florida Statutes, is amended to read:

5 400.4256 Assistance with self-administration of
6 medication.--

7 (6) The agency ~~department~~ may by rule establish
8 facility procedures and interpret terms as necessary to
9 implement this section.

10 Section 87. Subsection (8) of section 400.427, Florida
11 Statutes, is amended to read:

12 400.427 Property and personal affairs of residents.--

13 (8) The agency ~~department~~ may by rule clarify terms
14 and specify procedures and documentation necessary to
15 administer the provisions of this section relating to the
16 proper management of residents' funds and personal property
17 and the execution of surety bonds.

18 Section 88. Subsection (4) of section 400.4275,
19 Florida Statutes, is amended to read:

20 400.4275 Business practice; personnel records;
21 liability insurance.--The assisted living facility shall be
22 administered on a sound financial basis that is consistent
23 with good business practices.

24 (4) The agency ~~department~~ may by rule clarify terms,
25 establish requirements for financial records, accounting
26 procedures, personnel procedures, insurance coverage, and
27 reporting procedures, and specify documentation as necessary
28 to implement the requirements of this section.

29 Section 89. Section 400.431, Florida Statutes, is
30 amended to read:

31 400.431 Closing of facility; notice; penalty.--

1 (1) In addition to the requirements of part II of
2 chapter 408, ~~Whenever a facility voluntarily discontinues~~
3 ~~operation, it shall inform the agency in writing at least 90~~
4 ~~days prior to the discontinuance of operation.~~ the facility
5 shall ~~also~~ inform each resident or the next of kin, legal
6 representative, or agency acting on each resident's behalf, of
7 the fact and the proposed time of such discontinuance of
8 operation, following the notification requirements provided in
9 s. 400.428(1)(k). In the event a resident has no person to
10 represent him or her, the facility shall be responsible for
11 referral to an appropriate social service agency for
12 placement.

13 (2) Immediately upon the notice by the agency of the
14 voluntary or involuntary termination of such operation, the
15 agency shall monitor the transfer of residents to other
16 facilities and ensure that residents' rights are being
17 protected. The department, in consultation with the
18 Department of Children and Family Services, shall specify
19 procedures for ensuring that all residents who receive
20 services are appropriately relocated.

21 (3) All charges shall be prorated as of the date on
22 which the facility discontinues operation, and if any payments
23 have been made in advance, the payments for services not
24 received shall be refunded to the resident or the resident's
25 guardian within 10 working days of voluntary or involuntary
26 closure of the facility, whether or not such refund is
27 requested by the resident or guardian.

28 ~~(4) Immediately upon discontinuance of the operation~~
29 ~~of a facility, the owner shall surrender the license therefor~~
30 ~~to the agency, and the license shall be canceled.~~

31

1 ~~(4)(5)~~ The agency may levy a fine in an amount no
2 greater than \$5,000 upon each person or business entity that
3 owns any interest in a facility that terminates operation
4 without providing notice to the agency and the residents of
5 the facility at least 30 days before operation ceases. This
6 fine shall not be levied against any facility involuntarily
7 closed at the initiation of the agency. The agency shall use
8 the proceeds of the fines to operate the facility until all
9 residents of the facility are relocated ~~and shall deposit any~~
10 ~~balance of the proceeds into the Health Care Trust Fund~~
11 ~~established pursuant to s. 400.418.~~

12 Section 90. Section 400.434, Florida Statutes, is
13 amended to read:

14 400.434 Right of entry and inspection.--Any duly
15 designated officer or employee of the department, the
16 Department of Children and Family Services, ~~the agency,~~ the
17 Medicaid Fraud Control Unit of the Department of Legal
18 Affairs, the state or local fire marshal, ~~or~~ a member of the
19 state or local long-term care ombudsman council, or the agency
20 in accordance with s. 408.811 shall have the right to enter
21 unannounced upon and into the premises of any facility
22 licensed pursuant to this part in order to determine the state
23 of compliance with the provisions of this part, part II of
24 chapter 408, and applicable ~~of rules or standards in force~~
25 ~~pursuant thereto. The right of entry and inspection shall also~~
26 ~~extend to any premises which the agency has reason to believe~~
27 ~~is being operated or maintained as a facility without a~~
28 ~~license; but no such entry or inspection of any premises may~~
29 ~~be made without the permission of the owner or person in~~
30 ~~charge thereof, unless a warrant is first obtained from the~~
31 ~~circuit court authorizing such entry. The warrant requirement~~

1 ~~shall extend only to a facility which the agency has reason to~~
2 ~~believe is being operated or maintained as a facility without~~
3 ~~a license. Any application for a license or renewal thereof~~
4 ~~made pursuant to this part shall constitute permission for,~~
5 ~~and complete acquiescence in, any entry or inspection of the~~
6 ~~premises for which the license is sought, in order to~~
7 ~~facilitate verification of the information submitted on or in~~
8 ~~connection with the application; to discover, investigate, and~~
9 ~~determine the existence of abuse or neglect; or to elicit,~~
10 ~~receive, respond to, and resolve complaints. Any current valid~~
11 ~~license shall constitute unconditional permission for, and~~
12 ~~complete acquiescence in, any entry or inspection of the~~
13 ~~premises by authorized personnel.~~ The agency shall retain the
14 right of entry and inspection of facilities that have had a
15 license revoked or suspended within the previous 24 months, to
16 ensure that the facility is not operating unlawfully. However,
17 before entering the facility, a statement of probable cause
18 must be filed with the director of the agency, who must
19 approve or disapprove the action within 48 hours. Probable
20 cause shall include, but is not limited to, evidence that the
21 facility holds itself out to the public as a provider of
22 personal care services or the receipt of a complaint by the
23 long-term care ombudsman council about the facility. Data
24 collected by the state or local long-term care ombudsman
25 councils or the state or local advocacy councils may be used
26 by the agency in investigations involving violations of
27 regulatory standards.

28 Section 91. Subsection (1) of 400.435, Florida
29 Statutes, is repealed.

30 Section 92. Section 400.441, Florida Statutes, is
31 amended to read:

1 400.441 Rules establishing standards.--

2 (1) It is the intent of the Legislature that rules
3 published and enforced pursuant to this section shall include
4 criteria by which a reasonable and consistent quality of
5 resident care and quality of life may be ensured and the
6 results of such resident care may be demonstrated. Such rules
7 shall also ensure a safe and sanitary environment that is
8 residential and noninstitutional in design or nature. It is
9 further intended that reasonable efforts be made to
10 accommodate the needs and preferences of residents to enhance
11 the quality of life in a facility. In order to provide safe
12 and sanitary facilities and the highest quality of resident
13 care accommodating the needs and preferences of residents, the
14 agency department, in consultation with the department agency,
15 the Department of Children and Family Services, and the
16 Department of Health, shall adopt rules, policies, and
17 procedures to administer this part and part II of chapter 408,
18 which must include reasonable and fair minimum standards in
19 relation to:

20 (a) The requirements for and maintenance of
21 facilities, not in conflict with the provisions of chapter
22 553, relating to plumbing, heating, cooling, lighting,
23 ventilation, living space, and other housing conditions, which
24 will ensure the health, safety, and comfort of residents and
25 protection from fire hazard, including adequate provisions for
26 fire alarm and other fire protection suitable to the size of
27 the structure. Uniform firesafety standards shall be
28 established and enforced by the State Fire Marshal in
29 cooperation with the agency, the department, and the
30 Department of Health.

31 1. Evacuation capability determination.--

1 a. The provisions of the National Fire Protection
2 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3 for determining the ability of the residents, with or without
4 staff assistance, to relocate from or within a licensed
5 facility to a point of safety as provided in the fire codes
6 adopted herein. An evacuation capability evaluation for
7 initial licensure shall be conducted within 6 months after the
8 date of licensure. For existing licensed facilities that are
9 not equipped with an automatic fire sprinkler system, the
10 administrator shall evaluate the evacuation capability of
11 residents at least annually. The evacuation capability
12 evaluation for each facility not equipped with an automatic
13 fire sprinkler system shall be validated, without liability,
14 by the State Fire Marshal, by the local fire marshal, or by
15 the local authority having jurisdiction over firesafety,
16 before the license renewal date. If the State Fire Marshal,
17 local fire marshal, or local authority having jurisdiction
18 over firesafety has reason to believe that the evacuation
19 capability of a facility as reported by the administrator may
20 have changed, it may, with assistance from the facility
21 administrator, reevaluate the evacuation capability through
22 timed exiting drills. Translation of timed fire exiting drills
23 to evacuation capability may be determined:

- 24 (I) Three minutes or less: prompt.
25 (II) More than 3 minutes, but not more than 13
26 minutes: slow.
27 (III) More than 13 minutes: impractical.

28 b. The Office of the State Fire Marshal shall provide
29 or cause the provision of training and education on the proper
30 application of Chapter 5, NFPA 101A, 1995 edition, to its
31 employees, to staff of the Agency for Health Care

1 Administration who are responsible for regulating facilities
2 under this part, and to local governmental inspectors. The
3 Office of the State Fire Marshal shall provide or cause the
4 provision of this training within its existing budget, but may
5 charge a fee for this training to offset its costs. The
6 initial training must be delivered within 6 months after July
7 1, 1995, and as needed thereafter.

8 c. The Office of the State Fire Marshal, in
9 cooperation with provider associations, shall provide or cause
10 the provision of a training program designed to inform
11 facility operators on how to properly review bid documents
12 relating to the installation of automatic fire sprinklers. The
13 Office of the State Fire Marshal shall provide or cause the
14 provision of this training within its existing budget, but may
15 charge a fee for this training to offset its costs. The
16 initial training must be delivered within 6 months after July
17 1, 1995, and as needed thereafter.

18 d. The administrator of a licensed facility shall sign
19 an affidavit verifying the number of residents occupying the
20 facility at the time of the evacuation capability evaluation.

21 2. Firesafety requirements.--

22 a. Except for the special applications provided
23 herein, effective January 1, 1996, the provisions of the
24 National Fire Protection Association, Life Safety Code, NFPA
25 101, 1994 edition, Chapter 22 for new facilities and Chapter
26 23 for existing facilities shall be the uniform fire code
27 applied by the State Fire Marshal for assisted living
28 facilities, pursuant to s. 633.022.

29 b. Any new facility, regardless of size, that applies
30 for a license on or after January 1, 1996, must be equipped
31 with an automatic fire sprinkler system. The exceptions as

1 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
2 adopted herein, apply to any new facility housing eight or
3 fewer residents. On July 1, 1995, local governmental entities
4 responsible for the issuance of permits for construction shall
5 inform, without liability, any facility whose permit for
6 construction is obtained prior to January 1, 1996, of this
7 automatic fire sprinkler requirement. As used in this part,
8 the term "a new facility" does not mean an existing facility
9 that has undergone change of ownership.

10 c. Notwithstanding any provision of s. 633.022 or of
11 the National Fire Protection Association, NFPA 101A, Chapter
12 5, 1995 edition, to the contrary, any existing facility
13 housing eight or fewer residents is not required to install an
14 automatic fire sprinkler system, nor to comply with any other
15 requirement in Chapter 23, NFPA 101, 1994 edition, that
16 exceeds the firesafety requirements of NFPA 101, 1988 edition,
17 that applies to this size facility, unless the facility has
18 been classified as impractical to evacuate. Any existing
19 facility housing eight or fewer residents that is classified
20 as impractical to evacuate must install an automatic fire
21 sprinkler system within the timeframes granted in this
22 section.

23 d. Any existing facility that is required to install
24 an automatic fire sprinkler system under this paragraph need
25 not meet other firesafety requirements of Chapter 23, NFPA
26 101, 1994 edition, which exceed the provisions of NFPA 101,
27 1988 edition. The mandate contained in this paragraph which
28 requires certain facilities to install an automatic fire
29 sprinkler system supersedes any other requirement.

30 e. This paragraph does not supersede the exceptions
31 granted in NFPA 101, 1988 edition or 1994 edition.

1 f. This paragraph does not exempt facilities from
2 other firesafety provisions adopted under s. 633.022 and local
3 building code requirements in effect before July 1, 1995.

4 g. A local government may charge fees only in an
5 amount not to exceed the actual expenses incurred by local
6 government relating to the installation and maintenance of an
7 automatic fire sprinkler system in an existing and properly
8 licensed assisted living facility structure as of January 1,
9 1996.

10 h. If a licensed facility undergoes major
11 reconstruction or addition to an existing building on or after
12 January 1, 1996, the entire building must be equipped with an
13 automatic fire sprinkler system. Major reconstruction of a
14 building means repair or restoration that costs in excess of
15 50 percent of the value of the building as reported on the tax
16 rolls, excluding land, before reconstruction. Multiple
17 reconstruction projects within a 5-year period the total costs
18 of which exceed 50 percent of the initial value of the
19 building at the time the first reconstruction project was
20 permitted are to be considered as major reconstruction.
21 Application for a permit for an automatic fire sprinkler
22 system is required upon application for a permit for a
23 reconstruction project that creates costs that go over the
24 50-percent threshold.

25 i. Any facility licensed before January 1, 1996, that
26 is required to install an automatic fire sprinkler system
27 shall ensure that the installation is completed within the
28 following timeframes based upon evacuation capability of the
29 facility as determined under subparagraph 1.:

30 (I) Impractical evacuation capability, 24 months.

31 (II) Slow evacuation capability, 48 months.

1 (III) Prompt evacuation capability, 60 months.

2

3 The beginning date from which the deadline for the automatic
4 fire sprinkler installation requirement must be calculated is
5 upon receipt of written notice from the local fire official
6 that an automatic fire sprinkler system must be installed. The
7 local fire official shall send a copy of the document
8 indicating the requirement of a fire sprinkler system to the
9 Agency for Health Care Administration.

10 j. It is recognized that the installation of an
11 automatic fire sprinkler system may create financial hardship
12 for some facilities. The appropriate local fire official
13 shall, without liability, grant two 1-year extensions to the
14 timeframes for installation established herein, if an
15 automatic fire sprinkler installation cost estimate and proof
16 of denial from two financial institutions for a construction
17 loan to install the automatic fire sprinkler system are
18 submitted. However, for any facility with a class I or class
19 II, or a history of uncorrected class III, firesafety
20 deficiencies, an extension must not be granted. The local fire
21 official shall send a copy of the document granting the time
22 extension to the Agency for Health Care Administration.

23 k. A facility owner whose facility is required to be
24 equipped with an automatic fire sprinkler system under Chapter
25 23, NFPA 101, 1994 edition, as adopted herein, must disclose
26 to any potential buyer of the facility that an installation of
27 an automatic fire sprinkler requirement exists. The sale of
28 the facility does not alter the timeframe for the installation
29 of the automatic fire sprinkler system.

30 l. Existing facilities required to install an
31 automatic fire sprinkler system as a result of

1 construction-type restrictions in Chapter 23, NFPA 101, 1994
2 edition, as adopted herein, or evacuation capability
3 requirements shall be notified by the local fire official in
4 writing of the automatic fire sprinkler requirement, as well
5 as the appropriate date for final compliance as provided in
6 this subparagraph. The local fire official shall send a copy
7 of the document to the Agency for Health Care Administration.

8 m. Except in cases of life-threatening fire hazards,
9 if an existing facility experiences a change in the evacuation
10 capability, or if the local authority having jurisdiction
11 identifies a construction-type restriction, such that an
12 automatic fire sprinkler system is required, it shall be
13 afforded time for installation as provided in this
14 subparagraph.

15
16 Facilities that are fully sprinkled and in compliance with
17 other firesafety standards are not required to conduct more
18 than one of the required fire drills between the hours of 11
19 p.m. and 7 a.m., per year. In lieu of the remaining drills,
20 staff responsible for residents during such hours may be
21 required to participate in a mock drill that includes a review
22 of evacuation procedures. Such standards must be included or
23 referenced in the rules adopted by the State Fire Marshal.
24 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
25 final administrative authority for firesafety standards
26 established and enforced pursuant to this section. All
27 licensed facilities must have an annual fire inspection
28 conducted by the local fire marshal or authority having
29 jurisdiction.

30 3. Resident elopement requirements.--Facilities are
31 required to conduct a minimum of two resident elopement

1 prevention and response drills per year. All administrators
2 and direct care staff must participate in the drills which
3 shall include a review of procedures to address resident
4 elopement. Facilities must document the implementation of the
5 drills and ensure that the drills are conducted in a manner
6 consistent with the facility's resident elopement policies and
7 procedures.

8 (b) The preparation and annual update of a
9 comprehensive emergency management plan. Such standards must
10 be included in the rules adopted by the ~~agency~~ department
11 after consultation with the Department of Community Affairs.
12 At a minimum, the rules must provide for plan components that
13 address emergency evacuation transportation; adequate
14 sheltering arrangements; postdisaster activities, including
15 provision of emergency power, food, and water; postdisaster
16 transportation; supplies; staffing; emergency equipment;
17 individual identification of residents and transfer of
18 records; communication with families; and responses to family
19 inquiries. The comprehensive emergency management plan is
20 subject to review and approval by the local emergency
21 management agency. During its review, the local emergency
22 management agency shall ensure that the following agencies, at
23 a minimum, are given the opportunity to review the plan: the
24 Department of Elderly Affairs, the Department of Health, the
25 Agency for Health Care Administration, and the Department of
26 Community Affairs. Also, appropriate volunteer organizations
27 must be given the opportunity to review the plan. The local
28 emergency management agency shall complete its review within
29 60 days and either approve the plan or advise the facility of
30 necessary revisions.

31

1 (c) The number, training, and qualifications of all
2 personnel having responsibility for the care of residents.
3 The rules must require adequate staff to provide for the
4 safety of all residents. Facilities licensed for 17 or more
5 residents are required to maintain an alert staff for 24 hours
6 per day.

7 (d) All sanitary conditions within the facility and
8 its surroundings which will ensure the health and comfort of
9 residents. The rules must clearly delineate the
10 responsibilities of the agency's licensure and survey staff,
11 the county health departments, and the local authority having
12 jurisdiction over fire safety and ensure that inspections are
13 not duplicative. The agency may collect fees for food service
14 inspections conducted by the county health departments and
15 transfer such fees to the Department of Health.

16 (e) ~~License application and license renewal, transfer~~
17 ~~of ownership,~~ Proper management of resident funds and personal
18 property, surety bonds, resident contracts, refund policies,
19 ~~financial ability to operate,~~ and facility and staff records.

20 (f) Inspections, complaint investigations,
21 moratoriums, classification of deficiencies, levying and
22 enforcement of penalties, and use of income from fees and
23 fines.

24 (g) The enforcement of the resident bill of rights
25 specified in s. 400.428.

26 (h) The care and maintenance of residents, which must
27 include, but is not limited to:

- 28 1. The supervision of residents;
- 29 2. The provision of personal services;
- 30 3. The provision of, or arrangement for, social and
31 leisure activities;

1 4. The arrangement for appointments and transportation
2 to appropriate medical, dental, nursing, or mental health
3 services, as needed by residents;

4 5. The management of medication;

5 6. The nutritional needs of residents;

6 7. Resident records; and

7 8. Internal risk management and quality assurance.

8 (i) Facilities holding a limited nursing, extended
9 congregate care, or limited mental health license.

10 (j) The establishment of specific criteria to define
11 appropriateness of resident admission and continued residency
12 in a facility holding a standard, limited nursing, extended
13 congregate care, and limited mental health license.

14 (k) The use of physical or chemical restraints. The
15 use of physical restraints is limited to half-bed rails as
16 prescribed and documented by the resident's physician with the
17 consent of the resident or, if applicable, the resident's
18 representative or designee or the resident's surrogate,
19 guardian, or attorney in fact. The use of chemical restraints
20 is limited to prescribed dosages of medications authorized by
21 the resident's physician and must be consistent with the
22 resident's diagnosis. Residents who are receiving medications
23 that can serve as chemical restraints must be evaluated by
24 their physician at least annually to assess:

25 1. The continued need for the medication.

26 2. The level of the medication in the resident's
27 blood.

28 3. The need for adjustments in the prescription.

29 (l) The establishment of specific policies and
30 procedures on resident elopement. Facilities shall conduct a
31 minimum of two resident elopement drills each year. All

1 administrators and direct care staff shall participate in the
2 drills. Facilities shall document the drills.

3 (2) In adopting any rules pursuant to this part, the
4 agency ~~department~~, in conjunction with the department ~~agency~~,
5 shall make distinct standards for facilities based upon
6 facility size; the types of care provided; the physical and
7 mental capabilities and needs of residents; the type,
8 frequency, and amount of services and care offered; and the
9 staffing characteristics of the facility. Rules developed
10 pursuant to this section shall not restrict the use of shared
11 staffing and shared programming in facilities that are part of
12 retirement communities that provide multiple levels of care
13 and otherwise meet the requirements of law and rule. Except
14 for uniform firesafety standards, the agency ~~department~~ shall
15 adopt by rule separate and distinct standards for facilities
16 with 16 or fewer beds and for facilities with 17 or more beds.
17 The standards for facilities with 16 or fewer beds shall be
18 appropriate for a noninstitutional residential environment,
19 provided that the structure is no more than two stories in
20 height and all persons who cannot exit the facility unassisted
21 in an emergency reside on the first floor. The agency
22 ~~department~~, in conjunction with the department ~~agency~~, may
23 make other distinctions among types of facilities as necessary
24 to enforce the provisions of this part. Where appropriate, the
25 agency shall offer alternate solutions for complying with
26 established standards, based on distinctions made by the
27 department and the agency relative to the physical
28 characteristics of facilities and the types of care offered
29 therein.

30 (3) ~~The department shall submit a copy of proposed~~
31 ~~rules to the Speaker of the House of Representatives, the~~

1 ~~President of the Senate, and appropriate committees of~~
2 ~~substance for review and comment prior to the promulgation~~
3 ~~thereof.~~

4 (a) Rules adopted ~~promulgated~~ by the agency ~~department~~
5 shall encourage the development of homelike facilities that
6 ~~which~~ promote the dignity, individuality, personal strengths,
7 and decisionmaking ability of residents.

8 (b) The agency, in consultation with the department,
9 may waive rules promulgated pursuant to this part in order to
10 demonstrate and evaluate innovative or cost-effective
11 congregate care alternatives which enable individuals to age
12 in place. Such waivers may be granted only in instances where
13 there is reasonable assurance that the health, safety, or
14 welfare of residents will not be endangered. To apply for a
15 waiver, the licensee shall submit to the agency a written
16 description of the concept to be demonstrated, including
17 goals, objectives, and anticipated benefits; the number and
18 types of residents who will be affected, if applicable; a
19 brief description of how the demonstration will be evaluated;
20 and any other information deemed appropriate by the agency.
21 Any facility granted a waiver shall submit a report of
22 findings to the agency and the department within 12 months.
23 At such time, the agency may renew or revoke the waiver or
24 pursue any regulatory or statutory changes necessary to allow
25 other facilities to adopt the same practices. The agency
26 ~~department~~ may by rule clarify terms and establish waiver
27 application procedures, criteria for reviewing waiver
28 proposals, and procedures for reporting findings, as necessary
29 to implement this subsection.

30 (4) The agency may use an abbreviated biennial
31 standard licensure inspection that consists of a review of key

1 | quality-of-care standards in lieu of a full inspection in
2 | facilities which have a good record of past performance.
3 | However, a full inspection shall be conducted in facilities
4 | which have had a history of class I or class II violations,
5 | uncorrected class III violations, confirmed ombudsman council
6 | complaints, or confirmed licensure complaints, within the
7 | previous licensure period immediately preceding the inspection
8 | or when a potentially serious problem is identified during the
9 | abbreviated inspection. The agency, in consultation with the
10 | department, shall develop the key quality-of-care standards
11 | with input from the State Long-Term Care Ombudsman Council and
12 | representatives of provider groups for incorporation into its
13 | rules. ~~The department, in consultation with the agency, shall~~
14 | ~~report annually to the Legislature concerning its~~
15 | ~~implementation of this subsection. The report shall include,~~
16 | ~~at a minimum, the key quality of care standards which have~~
17 | ~~been developed; the number of facilities identified as being~~
18 | ~~eligible for the abbreviated inspection; the number of~~
19 | ~~facilities which have received the abbreviated inspection and,~~
20 | ~~of those, the number that were converted to full inspection;~~
21 | ~~the number and type of subsequent complaints received by the~~
22 | ~~agency or department on facilities which have had abbreviated~~
23 | ~~inspections; any recommendations for modification to this~~
24 | ~~subsection; any plans by the agency to modify its~~
25 | ~~implementation of this subsection; and any other information~~
26 | ~~which the department believes should be reported.~~

27 | ~~(5) A fee shall be charged by the department to any~~
28 | ~~person requesting a copy of this part or rules promulgated~~
29 | ~~under this part. Such fees shall not exceed the actual cost~~
30 | ~~of duplication and postage.~~

31 |

1 Section 93. Subsection (4) of section 400.442, Florida
2 Statutes, is amended to read:

3 400.442 Pharmacy and dietary services.--

4 (4) The ~~agency department~~ may by rule establish
5 procedures and specify documentation as necessary to implement
6 this section.

7 Section 94. Subsection (3) of section 400.444, Florida
8 Statutes, is amended to read:

9 400.444 Construction and renovation; requirements.--

10 (3) The ~~agency department~~ may adopt rules to establish
11 procedures and specify the documentation necessary to
12 implement this section.

13 Section 95. Subsections (1), (2), and (3) of section
14 400.447, Florida Statutes, and section 400.451, Florida
15 Statutes, are repealed.

16 Section 96. Subsections (1), (3), and (6) of section
17 400.452, Florida Statutes, are amended to read:

18 400.452 Staff training and educational programs; core
19 educational requirement.--

20 (1) Administrators and other assisted living facility
21 staff must meet minimum training and education requirements
22 established by the Department of Elderly Affairs or agency by
23 rule. This training and education is intended to assist
24 facilities to appropriately respond to the needs of residents,
25 to maintain resident care and facility standards, and to meet
26 licensure requirements.

27 (3) Effective January 1, 2004, a new facility
28 administrator must complete the required training and
29 education, including the competency test, within a reasonable
30 time after being employed as an administrator, as determined
31 by the department. Failure to do so is a violation of this

1 part and subjects the violator to an administrative fine as
2 prescribed in s. 400.419. Administrators licensed in
3 accordance with chapter 468, part II, are exempt from this
4 requirement. Other licensed professionals may be exempted, as
5 determined ~~by the department~~ by rule.

6 (6) Other facility staff shall participate in training
7 relevant to their job duties as specified by rule ~~of the~~
8 ~~department~~.

9 Section 97. Section 400.454, Florida Statutes, is
10 amended to read:

11 400.454 Collection of information; local subsidy.--

12 (1) To enable the agency ~~department~~ to collect the
13 information requested by the Legislature regarding the actual
14 cost of providing room, board, and personal care in
15 facilities, the agency may ~~department is authorized to~~ conduct
16 field visits and audits of facilities as may be necessary. The
17 owners of randomly sampled facilities shall submit such
18 reports, audits, and accountings of cost as required ~~the~~
19 ~~department may require~~ by rule; provided that such reports,
20 audits, and accountings shall be the minimum necessary to
21 implement the provisions of this section. Any facility
22 selected to participate in the study shall cooperate with the
23 agency ~~department~~ by providing cost of operation information
24 to interviewers.

25 (2) Local governments or organizations may contribute
26 to the cost of care of local facility residents by further
27 subsidizing the rate of state-authorized payment to such
28 facilities. Implementation of local subsidy shall require
29 agency ~~departmental~~ approval and shall not result in
30 reductions in the state supplement.

31

1 Section 98. Subsections (1) and (4) of section
2 400.464, Florida Statutes, are amended to read:

3 400.464 Home health agencies to be licensed;
4 expiration of license; exemptions; unlawful acts; penalties.--

5 (1) The requirements of part II of chapter 408 apply
6 to the provision of services that necessitate licensure
7 pursuant to this part and part II of chapter 408 and entities
8 licensed or registered by or applying for such licensure or
9 registration from the Agency for Health Care Administration
10 pursuant to this part. However, each applicant for licensure
11 and licensee is exempt from the provisions of ss.

12 ~~408.806(1)(e)2. and 408.810(10). Any home health agency must~~
13 ~~be licensed by the agency to operate in this state. A license~~
14 ~~issued to a home health agency, unless sooner suspended or~~
15 ~~revoked, expires 1 year after its date of issuance.~~

16 (4)(a) ~~An organization may not provide, offer, or~~
17 ~~advertise home health services to the public unless the~~
18 ~~organization has a valid license or is specifically exempted~~
19 ~~under this part.~~ An organization that offers or advertises to
20 the public any service for which licensure or registration is
21 required under this part must include in the advertisement the
22 license number or regulation number issued to the organization
23 by the agency. The agency shall assess a fine of not less
24 than \$100 to any licensee or registrant who fails to include
25 the license or registration number when submitting the
26 advertisement for publication, broadcast, or printing. The
27 holder of a license issued under this part may not advertise
28 or indicate to the public that it holds a home health agency
29 or nurse registry license other than the one it has been
30 issued.

31

1 (b) A person who violates paragraph (a) is subject to
2 an injunctive proceeding under s. 408.815 ~~s. 400.515~~. A
3 violation of paragraph (a) or s. 408.813 is a deceptive and
4 unfair trade practice and constitutes a violation of the
5 Florida Deceptive and Unfair Trade Practices Act.

6 ~~(c) A person who violates the provisions of paragraph~~
7 ~~(a) commits a misdemeanor of the second degree, punishable as~~
8 ~~provided in s. 775.082 or s. 775.083. Any person who commits~~
9 ~~a second or subsequent violation commits a misdemeanor of the~~
10 ~~first degree, punishable as provided in s. 775.082 or s.~~
11 ~~775.083. Each day of continuing violation constitutes a~~
12 ~~separate offense.~~

13 Section 99. Section 400.471, Florida Statutes, is
14 amended to read:

15 400.471 Application for license; fee; provisional
16 license; temporary permit.--

17 (1) Each applicant for licensure must comply with all
18 provisions of this part and part II of chapter 408.

19 ~~Application for an initial license or for renewal of an~~
20 ~~existing license must be made under oath to the agency on~~
21 ~~forms furnished by it and must be accompanied by the~~
22 ~~appropriate license fee as provided in subsection (8). The~~
23 ~~agency must take final action on an initial licensure~~
24 ~~application within 60 days after receipt of all required~~
25 ~~documentation.~~

26 (2) In addition to the requirements of part II of
27 chapter 408, the applicant must file with the application
28 satisfactory proof that the home health agency is in
29 compliance with this part and applicable rules, including:
30
31

1 (a) A listing of services to be provided, either
2 directly by the applicant or through contractual arrangements
3 with existing providers; and

4 (b) The number and discipline of professional staff to
5 be employed; ~~and~~

6 ~~(c) Proof of financial ability to operate.~~

7 ~~(3) An applicant for initial licensure must
8 demonstrate financial ability to operate by submitting a
9 balance sheet and income and expense statement for the first 2
10 years of operation which provide evidence of having sufficient
11 assets, credit, and projected revenues to cover liabilities
12 and expenses. The applicant shall have demonstrated financial
13 ability to operate if the applicant's assets, credit, and
14 projected revenues meet or exceed projected liabilities and
15 expenses. All documents required under this subsection must
16 be prepared in accordance with generally accepted accounting
17 principles, and the financial statement must be signed by a
18 certified public accountant.~~

19 ~~(4) Each applicant for licensure must comply with the
20 following requirements:~~

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

31

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

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

20 ~~(d) A provisional license may be granted to an~~
21 ~~applicant when each individual required by this section to~~
22 ~~undergo background screening has met the standards for the~~
23 ~~Department of Law Enforcement background check, but the agency~~
24 ~~has not yet received background screening results from the~~
25 ~~Federal Bureau of Investigation. A standard license may be~~
26 ~~granted to the licensee upon the agency's receipt of a report~~
27 ~~of the results of the Federal Bureau of Investigation~~
28 ~~background screening for each individual required by this~~
29 ~~section to undergo background screening which confirms that~~
30 ~~all standards have been met, or upon the granting of a~~
31 ~~disqualification exemption by the agency as set forth in~~

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

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

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

1 ~~director's relationship to the corporation satisfies the~~
2 ~~requirements of this paragraph.~~

3 ~~(g) A license may not be granted to an applicant if~~
4 ~~the applicant, administrator, or financial officer has been~~
5 ~~found guilty of, regardless of adjudication, or has entered a~~
6 ~~plea of nolo contendere or guilty to, any offense prohibited~~
7 ~~under the level 2 standards for screening set forth in chapter~~
8 ~~435, unless an exemption from disqualification has been~~
9 ~~granted by the agency as set forth in chapter 435.~~

10 ~~(h) The agency may deny or revoke licensure if the~~
11 ~~applicant:~~

12 ~~1. Has falsely represented a material fact in the~~
13 ~~application required by paragraph (e) or paragraph (f), or has~~
14 ~~omitted any material fact from the application required by~~
15 ~~paragraph (e) or paragraph (f); or~~

16 ~~2. Has been or is currently excluded, suspended,~~
17 ~~terminated from, or has involuntarily withdrawn from~~
18 ~~participation in this state's Medicaid program, or the~~
19 ~~Medicaid program of any other state, or from participation in~~
20 ~~the Medicare program or any other governmental or private~~
21 ~~health care or health insurance program.~~

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

24 ~~(3)(5)~~ In addition to the requirements of s. 408.810,
25 the home health agency must also obtain and maintain the
26 following insurance coverages in an amount of not less than
27 \$250,000 per claim, and the home health agency must submit
28 proof of coverage with an initial application for licensure
29 and with each annual application for license renewal:

30 (a) Malpractice insurance as defined in s.
31 624.605(1)(k);

1 (b) Liability insurance as defined in s.
2 624.605(1)(b).

3 ~~(6) Ninety days before the expiration date, an~~
4 ~~application for renewal must be submitted to the agency under~~
5 ~~oath on forms furnished by it, and a license must be renewed~~
6 ~~if the applicant has met the requirements established under~~
7 ~~this part and applicable rules. The home health agency must~~
8 ~~file with the application satisfactory proof that it is in~~
9 ~~compliance with this part and applicable rules. If there is~~
10 ~~evidence of financial instability, the home health agency must~~
11 ~~submit satisfactory proof of its financial ability to comply~~
12 ~~with the requirements of this part.~~

13 ~~(7) When transferring the ownership of a home health~~
14 ~~agency, the transferee must submit an application for a~~
15 ~~license at least 60 days before the effective date of the~~
16 ~~transfer. If the home health agency is being leased, a copy~~
17 ~~of the lease agreement must be filed with the application.~~

18 (4)(8) In accordance with s. 408.805, an applicant or
19 licensee shall pay a fee for each license application
20 submitted under this part, part II of chapter 408, and
21 applicable rules. The amount of the fee shall be established
22 by rule and shall be set at ~~The license fee and annual renewal~~
23 ~~fee required of a home health agency are nonrefundable. The~~
24 ~~agency shall set the fees in an amount that is sufficient to~~
25 ~~cover the agency's its costs in carrying out its~~
26 ~~responsibilities under this part, but not to exceed~~\$2,000 per
27 biennium~~\$1,000~~. However, state, county, or municipal
28 governments applying for licenses under this part are exempt
29 from the payment of license fees. ~~All fees collected under~~
30 ~~this part must be deposited in the Health Care Trust Fund for~~
31 ~~the administration of this part.~~

1 ~~(9) The license must be displayed in a conspicuous~~
2 ~~place in the administrative office of the home health agency~~
3 ~~and is valid only while in the possession of the person to~~
4 ~~which it is issued. The license may not be sold, assigned, or~~
5 ~~otherwise transferred, voluntarily or involuntarily, and is~~
6 ~~valid only for the home health agency and location for which~~
7 ~~originally issued.~~

8 ~~(10) A home health agency against whom a revocation or~~
9 ~~suspension proceeding is pending at the time of license~~
10 ~~renewal may be issued a provisional license effective until~~
11 ~~final disposition by the agency of such proceedings. If~~
12 ~~judicial relief is sought from the final disposition, the~~
13 ~~court that has jurisdiction may issue a temporary permit for~~
14 ~~the duration of the judicial proceeding.~~

15 ~~(5)(11)~~ The agency may not issue a license designated
16 as certified to a home health agency that fails to satisfy the
17 requirements of a Medicare certification survey from the
18 agency.

19 ~~(12) The agency may not issue a license to a home~~
20 ~~health agency that has any unpaid fines assessed under this~~
21 ~~part.~~

22 Section 100. Section 400.474, Florida Statutes, is
23 amended to read:

24 400.474 Denial, suspension, revocation of license;
25 injunction; grounds; penalties.--

26 (1) The agency may deny, revoke, and ~~or~~ suspend a
27 license, or impose an administrative fine in the manner
28 provided in chapter 120, or initiate injunctive proceedings
29 under part II of chapter 408 for the violation of any
30 provision of this part, part II of chapter 408, or applicable
31 rules s. 400.515.

1 (2) Any of the following actions by a home health
2 agency or its employee is grounds for disciplinary action by
3 the agency:

4 (a) Violation of this part, part II of chapter 408, or
5 of applicable rules.

6 (b) An intentional, reckless, or negligent act that
7 materially affects the health or safety of a patient.

8 (c) Knowingly providing home health services in an
9 unlicensed assisted living facility or unlicensed adult
10 family-care home, unless the home health agency or employee
11 reports the unlicensed facility or home to the agency within
12 72 hours after providing the services.

13 ~~(3) The agency may impose the following penalties for~~
14 ~~operating without a license upon an applicant or owner who has~~
15 ~~in the past operated, or who currently operates, a licensed~~
16 ~~home health agency.~~

17 ~~(a) If a home health agency that is found to be~~
18 ~~operating without a license wishes to apply for a license, the~~
19 ~~home health agency may submit an application only after the~~
20 ~~agency has verified that the home health agency no longer~~
21 ~~operates an unlicensed home health agency.~~

22 ~~(b) Any person, partnership, or corporation that~~
23 ~~violates paragraph (a) and that previously operated a licensed~~
24 ~~home health agency or concurrently operates both a licensed~~
25 ~~home health agency and an unlicensed home health agency~~
26 ~~commits a felony of the third degree punishable as provided in~~
27 ~~s. 775.082, s. 775.083, or s. 775.084. If an owner has an~~
28 ~~interest in more than one home health agency and fails to~~
29 ~~license any one of those home health agencies, the agency must~~
30 ~~issue a cease and desist order for the activities of the~~
31 ~~unlicensed home health agency and impose a moratorium on any~~

1 ~~or all of the licensed related home health agencies until the~~
2 ~~unlicensed home health agency is licensed.~~

3 ~~(3)(c)~~ If any home health agency is found to be
4 operating without a license ~~meets the criteria in paragraph~~
5 ~~(a) or paragraph (b)~~ and that home health agency has received
6 any government reimbursement for services ~~provided by an~~
7 ~~unlicensed home health agency~~, the agency shall make a fraud
8 referral to the appropriate government reimbursement program.

9 ~~(4) The agency may deny, revoke, or suspend the~~
10 ~~license of a home health agency, or may impose on a home~~
11 ~~health agency administrative fines not to exceed the aggregate~~
12 ~~sum of \$5,000 if:~~

13 ~~(a) The agency is unable to obtain entry to the home~~
14 ~~health agency to conduct a licensure survey, complaint~~
15 ~~investigation, surveillance visit, or monitoring visit.~~

16 ~~(b) An applicant or a licensed home health agency has~~
17 ~~falsely represented a material fact in the application, or has~~
18 ~~omitted from the application any material fact, including, but~~
19 ~~not limited to, the fact that the controlling or ownership~~
20 ~~interest is held by any officer, director, agent, manager,~~
21 ~~employee, affiliated person, partner, or shareholder who is~~
22 ~~not eligible to participate.~~

23 ~~(c) An applicant, owner, or person who has a 5 percent~~
24 ~~or greater interest in a licensed entity:~~

25 1. ~~Has been previously found by any licensing,~~
26 ~~certifying, or professional standards board or agency to have~~
27 ~~violated the standards or conditions that relate to home~~
28 ~~health related licensure or certification, or to the quality~~
29 ~~of home health related services provided; or~~

30 2. ~~Has been or is currently excluded, suspended,~~
31 ~~terminated from, or has involuntarily withdrawn from,~~

1 ~~participation in the Medicaid program of this state or any~~
2 ~~other state, the Medicare program, or any other governmental~~
3 ~~health care or health insurance program.~~

4 Section 101. Subsection (1) and paragraphs (a) and (b)
5 of subsection (2) of section 400.484, Florida Statutes, are
6 amended to read:

7 400.484 Right of inspection; deficiencies; fines.--

8 (1) In accordance with s. 408.811, ~~Any duly authorized~~
9 ~~officer or employee of the agency may make such inspections~~
10 ~~and investigations as are necessary in order to determine the~~
11 ~~state of compliance with this part and with applicable rules.~~
12 ~~The right of inspection extends to any business that the~~
13 ~~agency has reason to believe is being operated as a home~~
14 ~~health agency without a license, but such inspection of any~~
15 ~~such business may not be made without the permission of the~~
16 ~~owner or person in charge unless a warrant is first obtained~~
17 ~~from a circuit court. Any application for a license issued~~
18 ~~under this part or for license renewal constitutes permission~~
19 ~~for an appropriate inspection to verify the information~~
20 ~~submitted on or in connection with the application.~~

21 (2) The agency shall impose fines for various classes
22 of deficiencies in accordance with the following schedule:

23 (a) A class I deficiency is any act, omission, or
24 practice that results in a patient's death, disablement, or
25 permanent injury, or places a patient at imminent risk of
26 death, disablement, or permanent injury. Upon finding a class
27 I deficiency, the agency may impose an administrative fine in
28 the amount of \$5,000 for each occurrence and each day that the
29 deficiency exists. In addition, the agency may immediately
30 revoke the license and, ~~or~~ impose a moratorium pursuant to
31

1 ~~part II of chapter 408 on the admission of new patients,~~ until
2 the factors causing the deficiency have been corrected.

3 (b) A class II deficiency is any act, omission, or
4 practice that has a direct adverse effect on the health,
5 safety, or security of a patient. Upon finding a class II
6 deficiency, the agency may impose an administrative fine in
7 the amount of \$1,000 for each occurrence and each day that the
8 deficiency exists. In addition, the agency may suspend the
9 license ~~and, or~~ impose a moratorium pursuant to part II of
10 chapter 408 on the admission of new patients, until the
11 deficiency has been corrected.

12 Section 102. Section 400.487, Florida Statutes, is
13 amended to read:

14 400.487 Home health service agreements; physician's,
15 physician's assistant's, and advanced registered nurse
16 practitioner's treatment orders; patient assessment;
17 establishment and review of plan of care; provision of
18 services; orders not to resuscitate.--

19 (1) Services provided by a home health agency must be
20 covered by an agreement between the home health agency and the
21 patient or the patient's legal representative specifying the
22 home health services to be provided, the rates or charges for
23 services paid with private funds, and the sources method of
24 payment, which may include Medicare, Medicaid, private
25 insurance, personal funds, or a combination thereof. A home
26 health agency providing skilled care must make an assessment
27 of the patient's needs within 48 hours after the start of
28 services.

29 (2) When required by the provisions of chapter 464;
30 part I, part III, or part V of chapter 468; or chapter 486,
31 the attending physician, physician's assistant, or advanced

1 registered nurse practitioner, acting within his or her
2 respective scope of practice, shall ~~for a patient who is to~~
3 ~~receive skilled care must~~ establish treatment orders for a
4 patient who is to receive skilled care. The treatment orders
5 must be signed by the physician, physician's assistant, or
6 advanced registered nurse practitioner before a claim is
7 submitted to a managed care organization, the treatment orders
8 must be signed in the time allowed under the provider
9 agreement. The treatment orders shall ~~within 30 days after the~~
10 ~~start of care and must~~ be reviewed, as frequently as the
11 patient's illness requires, by the physician, physician's
12 assistant, or advanced registered nurse practitioner in
13 consultation with the home health agency ~~personnel that~~
14 ~~provide services to the patient.~~

15 (3) A home health agency shall arrange for supervisory
16 visits by a registered nurse to the home of a patient
17 receiving home health aide services in accordance with the
18 patient's direction and approval.

19 (4) Each patient has the right to be informed of and
20 to participate in the planning of his or her care. Each
21 patient must be provided, upon request, a copy of the plan of
22 care established and maintained for that patient by the home
23 health agency.

24 (5) When nursing services are ordered, the home health
25 agency to which a patient has been admitted for care must
26 provide the initial admission visit, all service evaluation
27 visits, and the discharge visit by qualified personnel who are
28 on the payroll of, and to whom an IRS payroll form W-2 will be
29 issued by, the home health agency. Services provided by others
30 under contractual arrangements to a home health agency must be
31 monitored and managed by the admitting home health agency. The

1 admitting home health agency is fully responsible for ensuring
2 that all care provided through its employees or contract staff
3 is delivered in accordance with this part and applicable
4 rules.

5 (6) The skilled care services provided by a home
6 health agency, directly or under contract, must be supervised
7 and coordinated in accordance with the plan of care.

8 (7) Home health agency personnel may withhold or
9 withdraw cardiopulmonary resuscitation if presented with an
10 order not to resuscitate executed pursuant to s. 401.45. The
11 agency shall adopt rules providing for the implementation of
12 such orders. Home health personnel and agencies shall not be
13 subject to criminal prosecution or civil liability, nor be
14 considered to have engaged in negligent or unprofessional
15 conduct, for withholding or withdrawing cardiopulmonary
16 resuscitation pursuant to such an order and rules adopted by
17 the agency.

18 Section 103. Section 400.494, Florida Statutes, is
19 amended to read:

20 400.494 Information about patients confidential.--

21 (1) Information about patients received by persons
22 employed by, or providing services to, a home health agency or
23 received by the licensing agency through reports or inspection
24 shall be confidential and exempt from the provisions of s.
25 119.07(1) and shall not be disclosed to any person other than
26 the patient without the written consent of that patient or the
27 patient's guardian.

28 (2) This section does not apply to information
29 lawfully requested by the Medicaid Fraud Control Unit of the
30 Office of the Attorney General or requested pursuant to s.
31 408.811 ~~Department of Legal Affairs.~~

1 Section 104. Section 400.495, Florida Statutes, is
2 amended to read:

3 400.495 Notice of toll-free telephone number for
4 central abuse hotline.--In addition to the requirements of s.
5 408.810(5), ~~On or before the first day home health services~~
6 ~~are provided to a patient, any home health agency or nurse~~
7 ~~registry licensed under this part must inform the patient and~~
8 ~~his or her immediate family, if appropriate, of the right to~~
9 ~~report abusive, neglectful, or exploitative practices. The~~
10 ~~statewide toll free telephone number for the central abuse~~
11 ~~hotline must be provided to patients in a manner that is~~
12 ~~clearly legible and must include the words: "To report abuse,~~
13 ~~neglect, or exploitation, please call toll free ... (phone~~
14 ~~number)...."~~ the Agency for Health Care Administration shall
15 adopt rules ~~that provide for 90 days' advance notice of a~~
16 ~~change in the toll free telephone number and~~ that outline due
17 process procedures, as provided under chapter 120, for home
18 health agency personnel and nurse registry personnel who are
19 reported to the central abuse hotline. Home health agencies
20 and nurse registries shall establish appropriate policies and
21 procedures for providing such notice to patients.

22 Section 105. Section 400.497, Florida Statutes, is
23 amended to read:

24 400.497 Rules establishing minimum standards.--The
25 agency shall adopt, publish, and enforce rules to implement
26 part II of chapter 408 and this part, including, as
27 applicable, ss. 400.506 and 400.509, which must provide
28 reasonable and fair minimum standards relating to:

29 (1) The home health aide competency test and home
30 health aide training. The agency shall create the home health
31 aide competency test and establish the curriculum and

1 | instructor qualifications for home health aide training.
2 | Licensed home health agencies may provide this training and
3 | shall furnish documentation of such training to other licensed
4 | home health agencies upon request. Successful passage of the
5 | competency test by home health aides may be substituted for
6 | the training required under this section and any rule adopted
7 | pursuant thereto.

8 | (2) Shared staffing. The agency shall allow shared
9 | staffing if the home health agency is part of a retirement
10 | community that provides multiple levels of care, is located on
11 | one campus, is licensed under this chapter, and otherwise
12 | meets the requirements of law and rule.

13 | (3) The criteria for the frequency of onsite licensure
14 | surveys.

15 | (4) Licensure application and renewal.

16 | (5) The requirements for onsite and electronic
17 | accessibility of supervisory personnel of home health
18 | agencies.

19 | (6) Information to be included in patients' records.

20 | (7) Geographic service areas.

21 | (8) Preparation of a comprehensive emergency
22 | management plan pursuant to s. 400.492.

23 | (a) The Agency for Health Care Administration shall
24 | adopt rules establishing minimum criteria for the plan and
25 | plan updates, with the concurrence of the Department of Health
26 | and in consultation with the Department of Community Affairs.

27 | (b) The rules must address the requirements in s.
28 | 400.492. In addition, the rules shall provide for the
29 | maintenance of patient-specific medication lists that can
30 | accompany patients who are transported from their homes.
31 |

1 (c) The plan is subject to review and approval by the
2 county health department. During its review, the county health
3 department shall ensure that the following agencies, at a
4 minimum, are given the opportunity to review the plan:

- 5 1. The local emergency management agency.
- 6 2. The Agency for Health Care Administration.
- 7 3. The local chapter of the American Red Cross or
8 other lead sheltering agency.
- 9 4. The district office of the Department of Children
10 and Family Services.

11
12 The county health department shall complete its review within
13 60 days after receipt of the plan and shall either approve the
14 plan or advise the home health agency of necessary revisions.

15 (d) For any home health agency that operates in more
16 than one county, the Department of Health shall review the
17 plan, after consulting with all of the county health
18 departments, the agency, and all the local chapters of the
19 American Red Cross or other lead sheltering agencies in the
20 areas of operation for that particular home health agency. The
21 Department of Health shall complete its review within 90 days
22 after receipt of the plan and shall either approve the plan or
23 advise the home health agency of necessary revisions. The
24 Department of Health shall make every effort to avoid imposing
25 differing requirements based on differences between counties
26 on the home health agency.

27 (e) The requirements in this subsection do not apply
28 to:

- 29 1. A facility that is certified under chapter 651 and
30 has a licensed home health agency used exclusively by
31 residents of the facility; or

1 2. A retirement community that consists of residential
2 units for independent living and either a licensed nursing
3 home or an assisted living facility, and has a licensed home
4 health agency used exclusively by the residents of the
5 retirement community, provided the comprehensive emergency
6 management plan for the facility or retirement community
7 provides for continuous care of all residents with special
8 needs during an emergency.

9 Section 106. Section 400.506, Florida Statutes, is
10 amended to read:

11 400.506 Licensure of nurse registries; requirements;
12 penalties.--

13 (1) A nurse registry is exempt from the licensing
14 requirements of a home health agency but must be licensed as a
15 nurse registry. The requirements of part II of chapter 408
16 apply to the provision of services that necessitate licensure
17 pursuant to ss. 400.506-400.518 and part II of chapter 408 and
18 to entities licensed by or applying for such license from the
19 Agency for Health Care Administration pursuant to ss.
20 400.506-400.518. Each operational site of the nurse registry
21 must be licensed, unless there is more than one site within a
22 county. If there is more than one site within a county, only
23 one license per county is required. Each operational site
24 must be listed on the license.

25 (2) Each applicant for licensure and licensee must
26 comply with all provisions of part II of chapter 408, with the
27 exception of ss. 408.806(1)(e)2. and 408.810(6) and (10). ~~the~~
28 ~~following requirements:~~

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

1 ~~in chapter 435, of the managing employee, or other similarly~~
2 ~~titled individual who is responsible for the daily operation~~
3 ~~of the nurse registry, and of the financial officer, or other~~
4 ~~similarly titled individual who is responsible for the~~
5 ~~financial operation of the registry, including billings for~~
6 ~~patient care and services. The applicant shall comply with~~
7 ~~the procedures for level 2 background screening as set forth~~
8 ~~in chapter 435.~~

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

14 ~~(c) Proof of compliance with the level 2 background~~
15 ~~screening requirements of chapter 435 which has been submitted~~
16 ~~within the previous 5 years in compliance with any other~~
17 ~~health care or assisted living licensure requirements of this~~
18 ~~state is acceptable in fulfillment of the requirements of~~
19 ~~paragraph (a).~~

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

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

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

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

1 ~~director's relationship to the corporation satisfies the~~
2 ~~requirements of this paragraph.~~

3 ~~(g) A license may not be granted to an applicant if~~
4 ~~the applicant or managing employee has been found guilty of,~~
5 ~~regardless of adjudication, or has entered a plea of nolo~~
6 ~~contendere or guilty to, any offense prohibited under the~~
7 ~~level 2 standards for screening set forth in chapter 435,~~
8 ~~unless an exemption from disqualification has been granted by~~
9 ~~the agency as set forth in chapter 435.~~

10 ~~(h) The agency may deny or revoke the license if any~~
11 ~~applicant:~~

12 ~~1. Has falsely represented a material fact in the~~
13 ~~application required by paragraph (e) or paragraph (f), or has~~
14 ~~omitted any material fact from the application required by~~
15 ~~paragraph (e) or paragraph (f); or~~

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

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

21 ~~(3) In accordance with s. 408.805, an applicant or~~
22 ~~licensee shall pay a fee for each license application~~
23 ~~submitted under ss. 400.508-400.518, part II of chapter 408,~~
24 ~~and applicable rules. The amount of the fee shall be~~
25 ~~established by rule and may not exceed \$2,000 per biennium.~~
26 ~~Application for license must be made to the Agency for Health~~
27 ~~Care Administration on forms furnished by it and must be~~
28 ~~accompanied by the appropriate licensure fee, as established~~
29 ~~by rule and not to exceed the cost of regulation under this~~
30 ~~part. The licensure fee for nurse registries may not exceed~~
31 ~~\$1,000 and must be deposited in the Health Care Trust Fund.~~

1 ~~(4) The Agency for Health Care Administration may~~
2 ~~deny, revoke, or suspend a license or impose an administrative~~
3 ~~fine in the manner provided in chapter 120 against a nurse~~
4 ~~registry that:~~

5 ~~(a) Fails to comply with this section or applicable~~
6 ~~rules.~~

7 ~~(b) Commits an intentional, reckless, or negligent act~~
8 ~~that materially affects the health or safety of a person~~
9 ~~receiving services.~~

10 ~~(5) A license issued for the operation of a nurse~~
11 ~~registry, unless sooner suspended or revoked, expires 1 year~~
12 ~~after its date of issuance. Sixty days before the expiration~~
13 ~~date, an application for renewal must be submitted to the~~
14 ~~Agency for Health Care Administration on forms furnished by~~
15 ~~it. The Agency for Health Care Administration shall renew the~~
16 ~~license if the applicant has met the requirements of this~~
17 ~~section and applicable rules. A nurse registry against which~~
18 ~~a revocation or suspension proceeding is pending at the time~~
19 ~~of license renewal may be issued a conditional license~~
20 ~~effective until final disposition by the Agency for Health~~
21 ~~Care Administration of such proceedings. If judicial relief~~
22 ~~is sought from the final disposition, the court having~~
23 ~~jurisdiction may issue a conditional license for the duration~~
24 ~~of the judicial proceeding.~~

25 ~~(6) The Agency for Health Care Administration may~~
26 ~~institute injunctive proceedings under s. 400.515.~~

27 (4)(7) A person that offers or advertises to the
28 public that it provides any service for which licensure is
29 required under this section must include in such advertisement
30 the license number issued to it by the Agency for Health Care
31 Administration.

1 ~~(8) It is unlawful for a person to offer or advertise~~
2 ~~to the public services as defined by rule without obtaining a~~
3 ~~valid license from the Agency for Health Care Administration.~~
4 ~~It is unlawful for any holder of a license to advertise or~~
5 ~~hold out to the public that he or she holds a license for~~
6 ~~other than that for which he or she actually holds a license.~~
7 ~~A person who violates this subsection is subject to injunctive~~
8 ~~proceedings under s. 400.515.~~

9 ~~(9) Any duly authorized officer or employee of the~~
10 ~~Agency for Health Care Administration may make such~~
11 ~~inspections and investigations as are necessary to respond to~~
12 ~~complaints or to determine the state of compliance with this~~
13 ~~section and applicable rules.~~

14 ~~(a) If, in responding to a complaint, an agent or~~
15 ~~employee of the Agency for Health Care Administration has~~
16 ~~reason to believe that a crime has been committed, he or she~~
17 ~~shall notify the appropriate law enforcement agency.~~

18 ~~(b) If, in responding to a complaint, an agent or~~
19 ~~employee of the Agency for Health Care Administration has~~
20 ~~reason to believe that abuse, neglect, or exploitation has~~
21 ~~occurred, according to the definitions in chapter 415, he or~~
22 ~~she shall file a report under chapter 415.~~

23 (5)(10)(a) A nurse registry may refer for contract in
24 private residences registered nurses and licensed practical
25 nurses registered and licensed under part I of chapter 464,
26 certified nursing assistants certified under part II of
27 chapter 464, home health aides who present documented proof of
28 successful completion of the training required by rule of the
29 agency, and companions or homemakers for the purposes of
30 providing those services authorized under s. 400.509(1). Each
31 person referred by a nurse registry must provide current

1 | documentation that he or she is free from communicable
2 | diseases.

3 | (b) A certified nursing assistant or home health aide
4 | may be referred for a contract to provide care to a patient in
5 | his or her home only if that patient is under a physician's
6 | care. A certified nursing assistant or home health aide
7 | referred for contract in a private residence shall be limited
8 | to assisting a patient with bathing, dressing, toileting,
9 | grooming, eating, physical transfer, and those normal daily
10 | routines the patient could perform for himself or herself were
11 | he or she physically capable. A certified nursing assistant
12 | or home health aide may not provide medical or other health
13 | care services that require specialized training and that may
14 | be performed only by licensed health care professionals. The
15 | nurse registry shall obtain the name and address of the
16 | attending physician and send written notification to the
17 | physician within 48 hours after a contract is concluded that a
18 | certified nursing assistant or home health aide will be
19 | providing care for that patient.

20 | (c) A nurse registry shall, at the time of contracting
21 | for services through the nurse registry, advise the patient,
22 | the patient's family, or a person acting on behalf of the
23 | patient of the availability of registered nurses to make
24 | visits to the patient's home at an additional cost. A
25 | ~~registered nurse shall make monthly visits to the patient's~~
26 | ~~home to assess the patient's condition and quality of care~~
27 | ~~being provided by the certified nursing assistant or home~~
28 | ~~health aide. Any condition that ~~which~~ in the professional~~
29 | judgment of the nurse requires further medical attention shall
30 | be reported to the attending physician and the nurse registry.
31 | The assessment shall become a part of the patient's file with

1 | the nurse registry ~~and may be reviewed by the agency during~~
2 | ~~their survey procedure.~~

3 | (6)~~(11)~~ A person who is referred by a nurse registry
4 | for contract in private residences and who is not a nurse
5 | licensed under part I of chapter 464 may perform only those
6 | services or care to clients that the person has been certified
7 | to perform or trained to perform as required by law or rules
8 | of the Agency for Health Care Administration or the Department
9 | of Business and Professional Regulation. Providing services
10 | beyond the scope authorized under this subsection constitutes
11 | the unauthorized practice of medicine or a violation of the
12 | Nurse Practice Act and is punishable as provided under chapter
13 | 458, chapter 459, or part I of chapter 464.

14 | (7)~~(12)~~ Each nurse registry must require every
15 | applicant for contract to complete an application form
16 | providing the following information:

17 | (a) The name, address, date of birth, and social
18 | security number of the applicant.

19 | (b) The educational background and employment history
20 | of the applicant.

21 | (c) The number and date of the applicable license or
22 | certification.

23 | (d) When appropriate, information concerning the
24 | renewal of the applicable license, registration, or
25 | certification.

26 | (8)~~(13)~~ Each nurse registry must comply with the
27 | procedures set forth in s. 400.512 for maintaining records of
28 | the employment history of all persons referred for contract
29 | and is subject to the standards and conditions set forth in
30 | that section. However, an initial screening may not be
31 |

1 required for persons who have been continuously registered
2 with the nurse registry since September 30, 1990.

3 ~~(9)~~~~(14)~~ The nurse registry must maintain the
4 application on file, and that file must be open to the
5 inspection of the Agency for Health Care Administration. The
6 nurse registry must maintain on file the name and address of
7 the client to whom the nurse or other nurse registry personnel
8 is sent for contract and the amount of the fee received by the
9 nurse registry. A nurse registry must maintain the file that
10 includes the application and other applicable documentation
11 for 3 years after the date of the last file entry of
12 client-related information.

13 ~~(10)~~~~(15)~~ Nurse registries shall assist persons who
14 would need assistance and sheltering during evacuations
15 because of physical, mental, or sensory disabilities in
16 registering with the appropriate local emergency management
17 agency pursuant to s. 252.355.

18 ~~(11)~~~~(16)~~ Each nurse registry shall prepare and
19 maintain a comprehensive emergency management plan that is
20 consistent with the criteria in this subsection and with the
21 local special needs plan. The plan shall be updated annually.
22 The plan shall specify how the nurse registry shall facilitate
23 the provision of continuous care by persons referred for
24 contract to persons who are registered pursuant to s. 252.355
25 during an emergency that interrupts the provision of care or
26 services in private residencies.

27 (a) All persons referred for contract who care for
28 persons registered pursuant to s. 252.355 must include in the
29 patient record a description of how care will be continued
30 during a disaster or emergency that interrupts the provision
31 of care in the patient's home. It shall be the responsibility

1 of the person referred for contract to ensure that continuous
2 care is provided.

3 (b) Each nurse registry shall maintain a current
4 prioritized list of patients in private residences who are
5 registered pursuant to s. 252.355 and are under the care of
6 persons referred for contract and who need continued services
7 during an emergency. This list shall indicate, for each
8 patient, if the client is to be transported to a special needs
9 shelter and if the patient is receiving skilled nursing
10 services. Nurse registries shall make this list available to
11 county health departments and to local emergency management
12 agencies upon request.

13 (c) Each person referred for contract who is caring
14 for a patient who is registered pursuant to s. 252.355 shall
15 provide a list of the patient's medication and equipment needs
16 to the nurse registry. Each person referred for contract shall
17 make this information available to county health departments
18 and to local emergency management agencies upon request.

19 (d) Each person referred for contract shall not be
20 required to continue to provide care to patients in emergency
21 situations that are beyond the person's control and that make
22 it impossible to provide services, such as when roads are
23 impassable or when patients do not go to the location
24 specified in their patient records.

25 (e) The comprehensive emergency management plan
26 required by this subsection is subject to review and approval
27 by the county health department. During its review, the county
28 health department shall ensure that, at a minimum, the local
29 emergency management agency, the Agency for Health Care
30 Administration, and the local chapter of the American Red
31 Cross or other lead sheltering agency are given the

1 opportunity to review the plan. The county health department
2 shall complete its review within 60 days after receipt of the
3 plan and shall either approve the plan or advise the nurse
4 registry of necessary revisions.

5 (f) The Agency for Health Care Administration shall
6 adopt rules establishing minimum criteria for the
7 comprehensive emergency management plan and plan updates
8 required by this subsection, with the concurrence of the
9 Department of Health and in consultation with the Department
10 of Community Affairs.

11 ~~(12)(17)~~ All persons referred for contract in private
12 residences by a nurse registry must comply with the following
13 requirements for a plan of treatment:

14 (a) When, in accordance with the privileges and
15 restrictions imposed upon a nurse under part I of chapter 464,
16 the delivery of care to a patient is under the direction or
17 supervision of a physician or when a physician is responsible
18 for the medical care of the patient, a medical plan of
19 treatment must be established for each patient receiving care
20 or treatment provided by a licensed nurse in the home. The
21 original medical plan of treatment must be timely signed by
22 the physician, physician's assistant, or advanced registered
23 nurse practitioner, acting within his or her respective scope
24 of practice, and reviewed ~~by him or her~~ in consultation with
25 the licensed nurse at least every 2 months. Any additional
26 order or change in orders must be obtained from the physician,
27 physician's assistant, or advanced registered nurse
28 practitioner, acting within his or her respective scope of
29 practice, and reduced to writing and timely signed by the
30 physician, physician's assistant, or advanced registered nurse
31 practitioner. The delivery of care under a medical plan of

1 treatment must be substantiated by the appropriate nursing
2 notes or documentation made by the nurse in compliance with
3 nursing practices established under part I of chapter 464.

4 (b) Whenever a medical plan of treatment is
5 established for a patient, the initial medical plan of
6 treatment, any amendment to the plan, additional order or
7 change in orders, and copy of nursing notes must be filed in
8 the office of the nurse registry.

9 ~~(13)(18)~~ The nurse registry must comply with the
10 notice requirements of s. 400.495, relating to abuse
11 reporting.

12 ~~(14)(19)~~ In addition to any other penalties imposed
13 pursuant to this section or part, the agency may assess costs
14 related to an investigation that results in a successful
15 prosecution, ~~excluding costs associated with an attorney's~~
16 ~~time. If the agency imposes such an assessment and the~~
17 ~~assessment is not paid, and if challenged is not the subject~~
18 ~~of a pending appeal, prior to the renewal of the license, the~~
19 ~~license shall not be issued until the assessment is paid or~~
20 ~~arrangements for payment of the assessment are made.~~

21 ~~(15)(20)~~ The Agency for Health Care Administration
22 shall adopt rules to implement this section and part II of
23 chapter 408.

24 Section 107. Section 400.509, Florida Statutes, is
25 amended to read:

26 400.509 Registration of particular service providers
27 exempt from licensure; certificate of registration; regulation
28 of registrants.--

29 (1) Any organization that provides companion services
30 or homemaker services and does not provide a home health
31 service to a person is exempt from licensure under this part.

1 However, any organization that provides companion services or
2 homemaker services must register with the agency.

3 (2) The requirements of part II of chapter 408 apply
4 to the provision of services that necessitate registration or
5 licensure pursuant to this section and part II of chapter 408
6 and entities registered by or applying for such registration
7 from the Agency for Health Care Administration pursuant to
8 this section. Each applicant for registration and registrant
9 must comply with all provisions of part II of chapter 408,
10 with the exception of ss. 408.806(1)(e) and 408.810(6)-(10).
11 ~~Registration consists of annually filing with the agency,~~
12 ~~under oath, on forms provided by it, the following~~
13 ~~information:~~

14 ~~(a) If the registrant is a firm or partnership, the~~
15 ~~name, address, date of birth, and social security number of~~
16 ~~every member.~~

17 ~~(b) If the registrant is a corporation or association,~~
18 ~~its name and address; the name, address, date of birth, and~~
19 ~~social security number of each of its directors and officers;~~
20 ~~and the name and address of each person having at least a 5~~
21 ~~percent interest in the corporation or association.~~

22 ~~(c) The name, address, date of birth, and social~~
23 ~~security number of each person employed by or under contract~~
24 ~~with the organization.~~

25 (3) In accordance with s. 408.805, applicants and
26 registrants shall pay fees for all registrations issued under
27 this part, part II of chapter 408, and applicable rules. The
28 amount of the fee shall be \$50 per biennium. The agency shall
29 charge a registration fee of \$25 to be submitted with the
30 information required under subsection (2).

31

1 ~~(4) Each applicant for registration must comply with~~
2 ~~the following requirements:~~

3 ~~(a) Upon receipt of a completed, signed, and dated~~
4 ~~application, the agency shall require background screening, in~~
5 ~~accordance with the level 1 standards for screening set forth~~
6 ~~in chapter 435, of every individual who will have contact with~~
7 ~~the client. The agency shall require background screening of~~
8 ~~the managing employee or other similarly titled individual who~~
9 ~~is responsible for the operation of the entity, and of the~~
10 ~~financial officer or other similarly titled individual who is~~
11 ~~responsible for the financial operation of the entity,~~
12 ~~including billings for client services in accordance with the~~
13 ~~level 2 standards for background screening as set forth in~~
14 ~~chapter 435.~~

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

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

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

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

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

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

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

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

17 ~~(h) The agency may deny or revoke the registration of~~
18 ~~any applicant who:~~

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

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

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

28 ~~(4)(5)~~ Each registrant must obtain the employment or
29 contract history of persons who are employed by or under
30 contract with the organization and who will have contact at
31 any time with patients or clients in their homes by:

1 (a) Requiring such persons to submit an employment or
2 contractual history to the registrant; and

3 (b) Verifying the employment or contractual history,
4 unless through diligent efforts such verification is not
5 possible. The agency shall prescribe by rule the minimum
6 requirements for establishing that diligent efforts have been
7 made.

8
9 There is no monetary liability on the part of, and no cause of
10 action for damages arises against, a former employer of a
11 prospective employee of or prospective independent contractor
12 with a registrant who reasonably and in good faith
13 communicates his or her honest opinions about the former
14 employee's or contractor's job performance. This subsection
15 does not affect the official immunity of an officer or
16 employee of a public corporation.

17 ~~(6) On or before the first day on which services are~~
18 ~~provided to a patient or client, any registrant under this~~
19 ~~part must inform the patient or client and his or her~~
20 ~~immediate family, if appropriate, of the right to report~~
21 ~~abusive, neglectful, or exploitative practices. The statewide~~
22 ~~toll free telephone number for the central abuse hotline must~~
23 ~~be provided to patients or clients in a manner that is clearly~~
24 ~~legible and must include the words: "To report abuse, neglect,~~
25 ~~or exploitation, please call toll free ... (phone number) ..."~~
26 ~~Registrants must establish appropriate policies and procedures~~
27 ~~for providing such notice to patients or clients.~~

28 ~~(7) The provisions of s. 400.512 regarding screening~~
29 ~~apply to any person or business entity registered under this~~
30 ~~section on or after October 1, 1994.~~

31

1 ~~(8) Upon verification that all requirements for~~
2 ~~registration have been met, the Agency for Health Care~~
3 ~~Administration shall issue a certificate of registration valid~~
4 ~~for no more than 1 year.~~

5 ~~(9) The Agency for Health Care Administration may~~
6 ~~deny, suspend, or revoke the registration of a person that:~~

7 ~~(a) Fails to comply with this section or applicable~~
8 ~~rules.~~

9 ~~(b) Commits an intentional, reckless, or negligent act~~
10 ~~that materially affects the health or safety of a person~~
11 ~~receiving services.~~

12 ~~(10) The Agency for Health Care Administration may~~
13 ~~institute injunctive proceedings under s. 400.515.~~

14 (5)(11) A person that offers or advertises to the
15 public a service for which registration is required must
16 include in its advertisement the registration number issued by
17 the Agency for Health Care Administration.

18 ~~(12) It is unlawful for a person to offer or advertise~~
19 ~~to the public services, as defined by rule, without obtaining~~
20 ~~a certificate of registration from the Agency for Health Care~~
21 ~~Administration. It is unlawful for any holder of a~~
22 ~~certificate of registration to advertise or hold out to the~~
23 ~~public that he or she holds a certificate of registration for~~
24 ~~other than that for which he or she actually holds a~~
25 ~~certificate of registration. Any person who violates this~~
26 ~~subsection is subject to injunctive proceedings under s.~~
27 ~~400.515.~~

28 ~~(13) Any duly authorized officer or employee of the~~
29 ~~Agency for Health Care Administration has the right to make~~
30 ~~such inspections and investigations as are necessary in order~~
31

1 ~~to respond to complaints or to determine the state of~~
2 ~~compliance with this section and applicable rules.~~

3 ~~(a) If, in responding to a complaint, an officer or~~
4 ~~employee of the Agency for Health Care Administration has~~
5 ~~reason to believe that a crime has been committed, he or she~~
6 ~~shall notify the appropriate law enforcement agency.~~

7 ~~(b) If, in responding to a complaint, an officer or~~
8 ~~employee of the Agency for Health Care Administration has~~
9 ~~reason to believe that abuse, neglect, or exploitation has~~
10 ~~occurred, according to the definitions in chapter 415, he or~~
11 ~~she shall file a report under chapter 415.~~

12 ~~(6)(14)~~ In addition to any other penalties imposed
13 pursuant to this section or part, the agency may assess costs
14 related to an investigation that results in a successful
15 prosecution, excluding costs associated with an attorney's
16 time. If the agency imposes such an assessment and the
17 assessment is not paid, and if challenged is not the subject
18 of a pending appeal, prior to the renewal of the registration,
19 the registration shall not be issued until the assessment is
20 paid or arrangements for payment of the assessment are made.

21 ~~(7)(15)~~ The Agency for Health Care Administration
22 shall adopt rules to administer this section and part II of
23 chapter 408.

24 Section 108. Section 400.512, Florida Statutes, is
25 amended to read:

26 400.512 Screening of home health agency personnel;
27 nurse registry personnel; and companions and homemakers.--The
28 agency shall require employment or contractor screening as
29 provided in chapter 435, using the level 1 standards for
30 screening set forth in that chapter, for home health agency
31 personnel; persons referred for employment by nurse

1 registries; and persons employed by companion or homemaker
2 services registered under s. 400.509.

3 (1)(a) The Agency for Health Care Administration may,
4 upon request, grant exemptions from disqualification from
5 employment or contracting under this section as provided in s.
6 435.07, except for health care practitioners licensed by the
7 Department of Health or a regulatory board within that
8 department.

9 (b) The appropriate regulatory board within the
10 Department of Health, or that department itself when there is
11 no board, may, upon request of the licensed health care
12 practitioner, grant exemptions from disqualification from
13 employment or contracting under this section as provided in s.
14 435.07.

15 ~~(2) The administrator of each home health agency, the~~
16 ~~managing employee of each nurse registry, and the managing~~
17 ~~employee of each companion or homemaker service registered~~
18 ~~under s. 400.509 must sign an affidavit annually, under~~
19 ~~penalty of perjury, stating that all personnel hired,~~
20 ~~contracted with, or registered on or after October 1, 1994,~~
21 ~~who enter the home of a patient or client in their service~~
22 ~~capacity have been screened and that its remaining personnel~~
23 ~~have worked for the home health agency or registrant~~
24 ~~continuously since before October 1, 1994.~~

25 (2)(3) As a prerequisite to operating as a home health
26 agency, nurse registry, or companion or homemaker service
27 under s. 400.509, the administrator or managing employee,
28 respectively, must submit to the agency his or her name and
29 any other information necessary to conduct a complete
30 screening according to this section. The agency shall submit
31 the information to the Department of Law Enforcement for state

1 | processing. The agency shall review the record of the
2 | administrator or manager with respect to the offenses
3 | specified in this section and shall notify the owner of its
4 | findings. If disposition information is missing on a criminal
5 | record, the administrator or manager, upon request of the
6 | agency, must obtain and supply within 30 days the missing
7 | disposition information to the agency. Failure to supply
8 | missing information within 30 days or to show reasonable
9 | efforts to obtain such information will result in automatic
10 | disqualification.

11 | ~~(3)~~(4) Proof of compliance with the screening
12 | requirements of chapter 435 shall be accepted in lieu of the
13 | requirements of this section if the person has been
14 | continuously employed or registered without a breach in
15 | service that exceeds 180 days, the proof of compliance is not
16 | more than 2 years old, and the person has been screened by the
17 | Department of Law Enforcement. A home health agency, nurse
18 | registry, or companion or homemaker service registered under
19 | s. 400.509 shall directly provide proof of compliance to
20 | another home health agency, nurse registry, or companion or
21 | homemaker service registered under s. 400.509. The recipient
22 | home health agency, nurse registry, or companion or homemaker
23 | service registered under s. 400.509 may not accept any proof
24 | of compliance directly from the person who requires screening.
25 | Proof of compliance with the screening requirements of this
26 | section shall be provided upon request to the person screened
27 | by the home health agencies; nurse registries; or companion or
28 | homemaker services registered under s. 400.509.

29 | ~~(4)~~(5) There is no monetary liability on the part of,
30 | and no cause of action for damages arises against, a licensed
31 | home health agency, licensed nurse registry, or companion or

1 homemaker service registered under s. 400.509, that, upon
2 notice that the employee or contractor has been found guilty
3 of, regardless of adjudication, or entered a plea of nolo
4 contendere or guilty to, any offense prohibited under s.
5 435.03 or under any similar statute of another jurisdiction,
6 terminates the employee or contractor, whether or not the
7 employee or contractor has filed for an exemption with the
8 agency in accordance with chapter 435 and whether or not the
9 time for filing has expired.

10 ~~(5)(6)~~ The costs of processing the statewide
11 correspondence criminal records checks must be borne by the
12 home health agency; the nurse registry; or the companion or
13 homemaker service registered under s. 400.509, or by the
14 person being screened, at the discretion of the home health
15 agency, nurse registry, or s. 400.509 registrant.

16 ~~(6)(7)(a)~~ It is a misdemeanor of the first degree,
17 punishable under s. 775.082 or s. 775.083, for any person
18 willfully, knowingly, or intentionally to:

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

24 ~~2. Operate or attempt to operate an entity licensed or~~
25 ~~registered under this part with persons who do not meet the~~
26 ~~minimum standards for good moral character as contained in~~
27 ~~this section; or~~

28 ~~2.3.~~ Use information from the criminal records
29 obtained under this section for any purpose other than
30 screening that person for employment as specified in this
31 section or release such information to any other person for

1 any purpose other than screening for employment under this
2 section.

3 (b) It is a felony of the third degree, punishable
4 under s. 775.082, s. 775.083, or s. 775.084, for any person
5 willfully, knowingly, or intentionally to use information from
6 the juvenile records of a person obtained under this section
7 for any purpose other than screening for employment under this
8 section.

9 Section 109. Section 400.515, Florida Statutes, is
10 repealed.

11 Section 110. Subsections (6) and (7) of section
12 400.551, Florida Statutes, are amended to read:

13 400.551 Definitions.--As used in this part, the term:

14 (6) "Operator" means the licensee or person having
15 general administrative charge of an adult day care center.

16 (7) "Owner" means the licensee ~~owner~~ of an adult day
17 care center.

18 Section 111. Section 400.554, Florida Statutes, is
19 amended to read:

20 400.554 License requirement; fee; exemption;
21 display.--

22 (1) The requirements of part II of chapter 408 apply
23 to the provision of services that necessitate licensure
24 pursuant to this part and part II of chapter 408 and to
25 entities licensed by or applying for such licensure from the
26 Agency for Health Care Administration pursuant to this part.
27 However, each applicant for licensure and licensee is exempt
28 from the provisions of s. 408.810(10). ~~It is unlawful to~~
29 ~~operate an adult day care center without first obtaining from~~
30 ~~the agency a license authorizing such operation. The agency~~
31

1 ~~is responsible for licensing adult day care centers in~~
2 ~~accordance with this part.~~

3 (2) Separate licenses are required for centers
4 operated on separate premises, even though operated under the
5 same management. Separate licenses are not required for
6 separate buildings on the same premises.

7 (3) In accordance with s. 408.805, an applicant or
8 licensee shall pay a fee for each license application
9 submitted under this part and part II of chapter 408. The
10 amount of the fee shall be established by rule ~~The biennial~~
11 ~~license fee required of a center shall be determined by the~~
12 ~~department, but may not exceed \$150~~ per biennium.

13 (4) County-operated or municipally operated centers
14 applying for licensure under this part are exempt from the
15 payment of license fees.

16 ~~(5) The license for a center shall be displayed in a~~
17 ~~conspicuous place inside the center.~~

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

24 Section 112. Section 400.555, Florida Statutes, is
25 amended to read:

26 400.555 Application for license.--

27 ~~(1) An application for a license to operate an adult~~
28 ~~day care center must be made to the agency on forms furnished~~
29 ~~by the agency and must be accompanied by the appropriate~~
30 ~~license fee unless the applicant is exempt from payment of the~~
31 ~~fee as provided in s. 400.554(4).~~

1 ~~(2)~~ In addition to all provisions of part II of
2 chapter 408, the applicant for licensure must furnish+

3 ~~(a)~~ a description of the physical and mental
4 capabilities and needs of the participants to be served and
5 the availability, frequency, and intensity of basic services
6 and of supportive and optional services to be provided and
7 proof of adequate liability coverage.+

8 ~~(b)~~ ~~Satisfactory proof of financial ability to operate~~
9 ~~and conduct the center in accordance with the requirements of~~
10 ~~this part, which must include, in the case of an initial~~
11 ~~application, a 1 year operating plan and proof of a 3 month~~
12 ~~operating reserve fund; and~~

13 ~~(c)~~ ~~Proof of adequate liability insurance coverage.~~

14 ~~(d)~~ ~~Proof of compliance with level 2 background~~
15 ~~screening as required under s. 400.5572.~~

16 ~~(e)~~ ~~A description and explanation of any exclusions,~~
17 ~~permanent suspensions, or terminations of the application from~~
18 ~~the Medicare or Medicaid programs. Proof of compliance with~~
19 ~~disclosure of ownership and control interest requirements of~~
20 ~~the Medicare or Medicaid programs shall be accepted in lieu of~~
21 ~~this submission.~~

22 Section 113. Section 400.556, Florida Statutes, is
23 amended to read:

24 400.556 Denial, suspension, revocation of license;
25 emergency action; administrative fines; investigations and
26 inspections.--

27 (1) The agency may deny, revoke, and ~~or~~ suspend a
28 license under this part, impose an action under s. 408.814,
29 and ~~or may~~ impose an administrative fine against the owner of
30 an adult day care center or its operator or employee in the
31 manner provided in chapter 120 for a violation of any

1 provision of this part, part II of chapter 408, or applicable
2 rule.

3 (2) Each of the following actions by the owner of an
4 adult day care center or by its operator or employee is a
5 ground for action by the agency against the owner of the
6 center or its operator or employee:

7 (a) An intentional or negligent act materially
8 affecting the health or safety of center participants.

9 ~~(b) A violation of this part or of any standard or~~
10 ~~rule under this part.~~

11 ~~(b)(c)~~ (b)(c) A failure of persons subject to level 2
12 background screening under s. 400.4174(1) to meet the
13 screening standards of s. 435.04, or the retention by the
14 center of an employee subject to level 1 background screening
15 standards under s. 400.4174(2) who does not meet the screening
16 standards of s. 435.03 and for whom exemptions from
17 disqualification have not been provided by the agency.

18 ~~(c)(d)~~ (c)(d) Failure to follow the criteria and procedures
19 provided under part I of chapter 394 relating to the
20 transportation, voluntary admission, and involuntary
21 examination of center participants.

22 ~~(d)(e)~~ (d)(e) Multiple or repeated violations of this part or
23 of any standard or rule adopted under this part.

24 ~~(f) Exclusion, permanent suspension, or termination of~~
25 ~~the owner, if an individual, officer, or board member of the~~
26 ~~adult day care center, if the owner is a firm, corporation,~~
27 ~~partnership, or association, or any person owning 5 percent or~~
28 ~~more of the center, from the Medicare or Medicaid program.~~

29 (3) The agency is responsible for all investigations
30 and inspections conducted pursuant to this part.

31

1 Section 114. Section 400.5565, Florida Statutes, is
2 amended to read:

3 400.5565 Administrative fines;~~interest~~.--

4 (1)(a) If the agency determines that an adult day care
5 center is not operated in compliance with this part, part II
6 of chapter 408, or applicable with rules ~~adopted under this~~
7 ~~part~~, the agency, notwithstanding any other administrative
8 action it takes, shall make a reasonable attempt to discuss
9 with the owner each violation and recommended corrective
10 action prior to providing the owner with written notification.
11 The agency may request the submission of a corrective action
12 plan for the center which demonstrates a good faith effort to
13 remedy each violation by a specific date, subject to the
14 approval of the agency.

15 (b) The owner of a center or its operator or employee
16 found in violation of this part, part II of chapter 408, or
17 applicable ~~of rules adopted under this part~~ may be fined by
18 the agency. A fine may not exceed \$500 for each violation.
19 In no event, however, may such fines in the aggregate exceed
20 \$5,000.

21 (c) The failure to correct a violation by the date set
22 by the agency, or the failure to comply with an approved
23 corrective action plan, is a separate violation for each day
24 such failure continues, unless the agency approves an
25 extension to a specific date.

26 ~~(d) If the owner of a center or its operator or~~
27 ~~employee appeals an agency action under this section and the~~
28 ~~fine is upheld, the violator shall pay the fine, plus interest~~
29 ~~at the legal rate specified in s. 687.01 for each day that the~~
30 ~~fine remains unpaid after the date set by the agency for~~
31 ~~payment of the fine.~~

1 (2) In determining whether to impose a fine and in
2 fixing the amount of any fine, the agency shall consider the
3 following factors:

4 (a) The gravity of the violation, including the
5 probability that death or serious physical or emotional harm
6 to a participant will result or has resulted, the severity of
7 the actual or potential harm, and the extent to which the
8 provisions of the applicable statutes or rules were violated.

9 (b) Actions taken by the owner or operator to correct
10 violations.

11 (c) Any previous violations.

12 (d) The financial benefit to the center of committing
13 or continuing the violation.

14 Section 115. Section 400.557, Florida Statutes, is
15 amended to read:

16 400.557 Expiration of license; renewal; conditional
17 license or permit.--

18 ~~(1) A license issued for the operation of an adult day~~
19 ~~care center, unless sooner suspended or revoked, expires 2~~
20 ~~years after the date of issuance. The agency shall notify a~~
21 ~~licensee at least 120 days before the expiration date that~~
22 ~~license renewal is required to continue operation. The~~
23 ~~notification must be provided electronically or by mail~~
24 ~~delivery. At least 90 days prior to the expiration date, an~~
25 ~~application for renewal must be submitted to the agency. A~~
26 ~~license shall be renewed, upon the filing of an application on~~
27 ~~forms furnished by the agency, if the applicant has first met~~
28 ~~the requirements of this part and of the rules adopted under~~
29 ~~this part. The applicant must file with the application~~
30 ~~satisfactory proof of financial ability to operate the center~~
31 ~~in accordance with the requirements of this part and in~~

1 ~~accordance with the needs of the participants to be served and~~
2 ~~an affidavit of compliance with the background screening~~
3 ~~requirements of s. 400.5572.~~

4 ~~(2) A licensee against whom a revocation or suspension~~
5 ~~proceeding is pending at the time for license renewal may be~~
6 ~~issued a conditional license effective until final disposition~~
7 ~~by the agency of the proceeding. If judicial relief is sought~~
8 ~~from the final disposition, the court having jurisdiction may~~
9 ~~issue a conditional permit effective for the duration of the~~
10 ~~judicial proceeding.~~

11 ~~(3) The agency may issue a conditional license to an~~
12 ~~applicant for license renewal or change of ownership if the~~
13 ~~applicant fails to meet all standards and requirements for~~
14 ~~licensure. A conditional license issued under this subsection~~
15 ~~must be limited to a specific period not exceeding 6 months,~~
16 ~~as determined by the agency, and must be accompanied by an~~
17 ~~approved plan of correction.~~

18 Section 116. Section 400.5572, Florida Statutes, is
19 amended to read:

20 400.5572 Background screening.--

21 ~~(1)(a) Level 2 background screening must be conducted~~
22 ~~on each of the following persons, who shall be considered~~
23 ~~employees for the purposes of conducting screening under~~
24 ~~chapter 435:~~

25 ~~1. The adult day care center owner if an individual,~~
26 ~~the operator, and the financial officer.~~

27 ~~2. An officer or board member if the owner of the~~
28 ~~adult day care center is a firm, corporation, partnership, or~~
29 ~~association, or any person owning 5 percent or more of the~~
30 ~~facility, if the agency has probable cause to believe that~~
31 ~~such person has been convicted of any offense prohibited by s.~~

1 ~~435.04. For each officer, board member, or person owning 5~~
2 ~~percent or more who has been convicted of any such offense,~~
3 ~~the facility shall submit to the agency a description and~~
4 ~~explanation of the conviction at the time of license~~
5 ~~application. This subparagraph does not apply to a board~~
6 ~~member of a not for profit corporation or organization if the~~
7 ~~board member serves solely in a voluntary capacity, does not~~
8 ~~regularly take part in the day to day operational decisions of~~
9 ~~the corporation or organization, receives no remuneration for~~
10 ~~his or her services, and has no financial interest and has no~~
11 ~~family members with a financial interest in the corporation or~~
12 ~~organization, provided that the board member and facility~~
13 ~~submit a statement affirming that the board member's~~
14 ~~relationship to the facility satisfies the requirements of~~
15 ~~this subparagraph.~~

16 ~~(b) Proof of compliance with level 2 screening~~
17 ~~standards which has been submitted within the previous 5 years~~
18 ~~to meet any facility or professional licensure requirements of~~
19 ~~the agency or the Department of Health satisfies the~~
20 ~~requirements of this subsection.~~

21 ~~(c) The agency may grant a provisional license to an~~
22 ~~adult day care center applying for an initial license when~~
23 ~~each individual required by this subsection to undergo~~
24 ~~screening has completed the Department of Law Enforcement~~
25 ~~background check, but has not yet received results from the~~
26 ~~Federal Bureau of Investigation, or when a request for an~~
27 ~~exemption from disqualification has been submitted to the~~
28 ~~agency pursuant to s. 435.07, but a response has not been~~
29 ~~issued.~~

30 ~~(2) The owner or administrator of an adult day care~~
31 ~~center must conduct level 1 background screening as set forth~~

1 in chapter 435 on all employees hired on or after October 1,
2 1998, who provide basic services or supportive and optional
3 services to the participants. Such persons satisfy this
4 requirement if:

5 ~~(1)(a)~~ Proof of compliance with level 1 screening
6 requirements obtained to meet any professional license
7 requirements in this state is provided and accompanied, under
8 penalty of perjury, by a copy of the person's current
9 professional license and an affidavit of current compliance
10 with the background screening requirements.

11 ~~(2)(b)~~ The person required to be screened has been
12 continuously employed, without a breach in service that
13 exceeds 180 days, in the same type of occupation for which the
14 person is seeking employment and provides proof of compliance
15 with the level 1 screening requirement which is no more than 2
16 years old. Proof of compliance must be provided directly from
17 one employer or contractor to another, and not from the person
18 screened. Upon request, a copy of screening results shall be
19 provided to the person screened by the employer retaining
20 documentation of the screening.

21 ~~(3)(c)~~ The person required to be screened is employed
22 by a corporation or business entity or related corporation or
23 business entity that owns, operates, or manages more than one
24 facility or agency licensed under this chapter, and for whom a
25 level 1 screening was conducted by the corporation or business
26 entity as a condition of initial or continued employment.

27 Section 117. Sections 400.5575 and 400.558, Florida
28 Statutes, are repealed.

29 Section 118. Section 400.559, Florida Statutes, is
30 amended to read:

31

1 400.559 Closing or change of owner or operator of
2 center.--

3 ~~(1) Before operation of an adult day care center may~~
4 ~~be voluntarily discontinued, the operator must, inform the~~
5 ~~agency in writing~~ at least 60 days prior to the discontinuance
6 of operation. ~~The operator must also, at such time, inform~~
7 each participant of the fact and the proposed date of such
8 discontinuance of operation.

9 ~~(2) Immediately upon discontinuance of the operation~~
10 ~~of a center, the owner or operator shall surrender the license~~
11 ~~for the center to the agency, and the license shall be~~
12 ~~canceled by the agency.~~

13 ~~(3) If a center has a change of ownership, the new~~
14 ~~owner shall apply to the agency for a new license at least 60~~
15 ~~days before the date of the change of ownership.~~

16 ~~(4) If a center has a change of operator, the new~~
17 ~~operator shall notify the agency in writing within 30 days~~
18 ~~after the change of operator.~~

19 Section 119. Section 400.56, Florida Statutes, is
20 amended to read:

21 400.56 Right of entry and inspection.--In accordance
22 with s. 408.811, Any duly designated officer or employee of
23 the agency or department has the right to enter the premises
24 of any adult day care center licensed pursuant to this part,
25 at any reasonable time, in order to determine the state of
26 compliance with this part, part II of chapter 408, and
27 applicable the rules or standards in force pursuant to this
28 part. The right of entry and inspection also extends to any
29 premises that the agency has reason to believe are being
30 operated as a center without a license, but no entry or
31 inspection of any unlicensed premises may be made without the

1 ~~permission of the owner or operator unless a warrant is first~~
2 ~~obtained from the circuit court authorizing entry or~~
3 ~~inspection. Any application for a center license or license~~
4 ~~renewal made pursuant to this part constitutes permission for,~~
5 ~~and complete acquiescence in, any entry or inspection of the~~
6 ~~premises for which the license is sought in order to~~
7 ~~facilitate verification of the information submitted on or in~~
8 ~~connection with the application.~~

9 Section 120. Section 400.562, Florida Statutes, is
10 amended to read:

11 400.562 Rules establishing standards.--

12 (1) The ~~agency~~ Department of Elderly Affairs, in
13 conjunction with the department ~~agency~~, shall adopt rules to
14 implement the provisions of this part and part II of chapter
15 408. The rules must include reasonable and fair standards.
16 Any conflict between these standards and those that may be set
17 forth in local, county, or municipal ordinances shall be
18 resolved in favor of those having statewide effect. Such
19 standards must relate to:

20 (a) The maintenance of adult day care centers with
21 respect to plumbing, heating, lighting, ventilation, and other
22 building conditions, including adequate meeting space, to
23 ensure the health, safety, and comfort of participants and
24 protection from fire hazard. Such standards may not conflict
25 with chapter 553 and must be based upon the size of the
26 structure and the number of participants.

27 (b) The number and qualifications of all personnel
28 employed by adult day care centers who have responsibilities
29 for the care of participants.

30 (c) All sanitary conditions within adult day care
31 centers and their surroundings, including water supply, sewage

1 disposal, food handling, and general hygiene, and maintenance
2 of sanitary conditions, to ensure the health and comfort of
3 participants.

4 (d) Basic services provided by adult day care centers.

5 (e) Supportive and optional services provided by adult
6 day care centers.

7 (f) Data and information relative to participants and
8 programs of adult day care centers, including, but not limited
9 to, the physical and mental capabilities and needs of the
10 participants, the availability, frequency, and intensity of
11 basic services and of supportive and optional services
12 provided, the frequency of participation, the distances
13 traveled by participants, the hours of operation, the number
14 of referrals to other centers or elsewhere, and the incidence
15 of illness.

16 (g) Components of a comprehensive emergency management
17 plan, developed in consultation with the Department of Health,
18 the Department of Elderly Affairs ~~Agency for Health Care~~
19 ~~Administration~~, and the Department of Community Affairs.

20 ~~(2) Pursuant to s. 119.07, the agency may charge a fee~~
21 ~~for furnishing a copy of this part, or of the rules adopted~~
22 ~~under this part, to any person upon request for the copy.~~

23 ~~(2)(3)~~ Pursuant to this part, s. 408.811, and
24 applicable rules ~~adopted by the department~~, the agency may
25 conduct an abbreviated biennial inspection of key
26 quality-of-care standards, in lieu of a full inspection, of a
27 center that has a record of good performance. However, the
28 agency must conduct a full inspection of a center that has had
29 one or more confirmed complaints within the licensure period
30 immediately preceding the inspection or which has a serious
31 problem identified during the abbreviated inspection. The

1 agency shall by rule develop the key quality-of-care
2 standards, taking into consideration the comments and
3 recommendations of the Department of Elderly Affairs and of
4 provider groups. ~~These standards shall be included in rules~~
5 ~~adopted by the Department of Elderly Affairs.~~

6 Section 121. Section 400.564, Florida Statutes, is
7 repealed.

8 Section 122. Section 400.602, Florida Statutes, is
9 amended to read:

10 400.602 Licensure required; prohibited acts;
11 exemptions; display, transferability of license.--

12 (1)~~(a)~~ The requirements of part II of chapter 408
13 apply to the provision of services that necessitate licensure
14 pursuant to this part and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to this part.

17 ~~It is unlawful to operate or maintain a hospice without first~~
18 ~~obtaining a license from the agency.~~

19 ~~(b) It is unlawful for~~ Any person or legal entity not
20 licensed as a hospice under this part may not ~~to~~ use the word
21 "hospice" in its name, or ~~to~~ offer or advertise hospice
22 services or hospice-like services in such a way as to mislead
23 a person to believe that the offeror is a hospice licensed
24 under this part.

25 (2) Services provided by a hospital, nursing home, or
26 other health care facility, health care provider, or
27 caregiver, or under the Community Care for the Elderly Act, do
28 not constitute a hospice unless the facility, provider, or
29 caregiver establishes a separate and distinct administrative
30 program to provide home, residential, and homelike inpatient
31 hospice services.

1 (3)(a) A separately licensed hospice may not use a
2 name which is substantially the same as the name of another
3 hospice licensed under this part.

4 (b) A licensed hospice which intends to change its
5 name or address must notify the agency at least 60 days before
6 making the change.

7 ~~(4) The license shall be displayed in a conspicuous~~
8 ~~place inside the hospice program office; shall be valid only~~
9 ~~in the possession of the person or public agency to which it~~
10 ~~is issued; shall not be subject to sale, assignment, or other~~
11 ~~transfer, voluntary or involuntary; and shall not be valid for~~
12 ~~any hospice other than the hospice for which originally~~
13 ~~issued.~~

14 ~~(4)(5)~~ Notwithstanding s. 400.601(3), any hospice
15 operating in corporate form exclusively as a hospice,
16 incorporated on or before July 1, 1978, may be transferred to
17 a for-profit or not-for-profit entity, and may transfer the
18 license to that entity.

19 ~~(5)(6)~~ Notwithstanding s. 400.601(3), at any time
20 after July 1, 1995, any entity entitled to licensure under
21 subsection~~(4)(5)~~ may obtain a license for up to two
22 additional hospices in accordance with the other requirements
23 of this part and upon receipt of any certificate of need that
24 may be required under the provisions of part I of chapter 408
25 ~~ss. 408.031-408.045.~~

26 Section 123. Section 400.605, Florida Statutes, is
27 amended to read:

28 400.605 Administration; forms; fees; rules;
29 inspections; fines.--

30 (1) The agency department, in consultation with the
31 department agency, shall by rule establish minimum standards

1 and procedures for a hospice pursuant to this part and part II
2 of chapter 408. The rules must include:

3 ~~(a)~~ ~~License application procedures and requirements.~~

4 (a)(b) The qualifications of professional and
5 ancillary personnel to ensure the provision of appropriate and
6 adequate hospice care.

7 (b)(c) Standards and procedures for the administrative
8 management of a hospice.

9 (c)(d) Standards for hospice services that ensure the
10 provision of quality patient care.

11 (d)(e) Components of a patient plan of care.

12 (e)(f) Procedures relating to the implementation of
13 advanced directives and do-not-resuscitate orders.

14 (f)(g) Procedures for maintaining and ensuring
15 confidentiality of patient records.

16 (g)(h) Standards for hospice care provided in
17 freestanding inpatient facilities that are not otherwise
18 licensed medical facilities and in residential care facilities
19 such as nursing homes, assisted living facilities, adult
20 family care homes, and hospice residential units and
21 facilities.

22 (h)(i) Physical plant standards for hospice
23 residential and inpatient facilities and units.

24 (i)(j) Components of a comprehensive emergency
25 management plan, developed in consultation with the Department
26 of Health, the Department of Elderly Affairs, and the
27 Department of Community Affairs.

28 (j)(k) Standards and procedures relating to the
29 establishment and activities of a quality assurance and
30 utilization review committee.

31

1 ~~(k)(1)~~ Components and procedures relating to the
2 collection of patient demographic data and other information
3 on the provision of hospice care in this state.

4 (2) In accordance with s. 408.805, an applicant or
5 licensee shall pay a fee for each license application
6 submitted under this part, part II of chapter 408, and
7 applicable rules. The amount of the fee shall be established
8 by rule and may not exceed \$1,200 per biennium. The agency
9 shall:

10 ~~(a) Prepare and furnish all forms necessary under the~~
11 ~~provisions of this part in relation to applications for~~
12 ~~licensure or licensure renewals.~~

13 ~~(b) Collect from the applicant at the time of filing~~
14 ~~an application for a license or at the time of renewal of a~~
15 ~~license a fee which must be reasonably calculated to cover the~~
16 ~~cost of regulation under this part, but may not exceed \$600~~
17 ~~per program. All fees collected under this part shall be~~
18 ~~deposited in the Health Care Trust Fund for the administration~~
19 ~~of this part.~~

20 ~~(c) Issue hospice licenses to all applicants which~~
21 ~~meet the provisions of this part and applicable rules.~~

22 ~~(3)(d)~~ In accordance with s. 408.811, the agency shall
23 conduct annual licensure inspections of all licensees, except
24 that licensure inspections may be conducted biennially for
25 hospices having a 3-year record of substantial compliance.

26 ~~(e)~~ The agency shall conduct such inspections and
27 investigations as are necessary in order to determine the
28 state of compliance with the provisions of this part, part II
29 of chapter 408, and applicable adopted rules. The right of
30 inspection also extends to any program that the agency has
31 reason to believe is offering or advertising itself as a

1 ~~hospice without a license, but no inspection may be made~~
2 ~~without the permission of the owner or person in charge~~
3 ~~thereof unless a warrant is first obtained from a circuit~~
4 ~~court authorizing such inspection. An application for a~~
5 ~~license or license renewal made pursuant to this part~~
6 ~~constitutes permission for an inspection of the hospice for~~
7 ~~which the license is sought in order to facilitate~~
8 ~~verification of the information submitted on or in connection~~
9 ~~with the application.~~

10 (4)(f) In accordance with part II of chapter 408, the
11 agency may impose an administrative fine for any violation of
12 the provisions of this part, part II of chapter 408, or
13 applicable rules.

14 Section 124. Section 400.606, Florida Statutes, is
15 amended to read:

16 400.606 License; application; renewal; conditional
17 license or permit; certificate of need.--

18 (1) ~~A license application must be filed on a form~~
19 ~~provided by the agency and must be accompanied by the~~
20 ~~appropriate license fee as well as satisfactory proof that the~~
21 ~~hospice is in compliance with this part and any rules adopted~~
22 ~~by the department and proof of financial ability to operate~~
23 ~~and conduct the hospice in accordance with the requirements of~~
24 ~~this part.~~ The initial application and application for a
25 change of ownership must be accompanied by a plan for the
26 delivery of home, residential, and homelike inpatient hospice
27 services to terminally ill persons and their families. Such
28 plan must contain, but need not be limited to:

29 (a) The estimated average number of terminally ill
30 persons to be served monthly.

31

1 (b) The geographic area in which hospice services will
2 be available.

3 (c) A listing of services which are or will be
4 provided, either directly by the applicant or through
5 contractual arrangements with existing providers.

6 (d) Provisions for the implementation of hospice home
7 care within 3 months after licensure.

8 (e) Provisions for the implementation of hospice
9 homelike inpatient care within 12 months after licensure.

10 (f) The number and disciplines of professional staff
11 to be employed.

12 (g) The name and qualifications of any existing or
13 potential contractee.

14 (h) A plan for attracting and training volunteers.

15 (i) The projected annual operating cost of the
16 hospice.

17 ~~(j) A statement of financial resources and personnel~~
18 ~~available to the applicant to deliver hospice care.~~

19
20 If the applicant is licensed to operate an existing health
21 care provider, the application must be accompanied by a copy
22 of the most recent profit-loss statement and, if applicable,
23 the most recent licensure inspection report.

24 ~~(2) Each applicant must submit to the agency with its~~
25 ~~application a description and explanation of any exclusions,~~
26 ~~permanent suspensions, or terminations from the Medicaid or~~
27 ~~Medicare programs of the owner, if an individual; of any~~
28 ~~officer or board member of the hospice, if the owner is a~~
29 ~~firm, corporation, partnership, or association; or of any~~
30 ~~person owning 5 percent or more of the hospice. Proof of~~
31 ~~compliance with disclosure of ownership and control interest~~

1 ~~requirements of the Medicaid or Medicare programs may be~~
2 ~~accepted in lieu of this submission.~~

3 ~~(2)(3) A license issued for the operation of a~~
4 ~~hospice, unless sooner suspended or revoked, shall expire~~
5 ~~automatically 1 year from the date of issuance. Sixty days~~
6 ~~prior to the expiration date, a hospice wishing to renew its~~
7 ~~license shall submit an application for renewal to the agency~~
8 ~~on forms furnished by the agency. The agency shall renew the~~
9 ~~license if the applicant has first met the requirements~~
10 ~~established under this part and all applicable rules and has~~
11 ~~provided the information described under this section in~~
12 ~~addition to the application. However, The application for~~
13 ~~license renewal shall be accompanied by an update of the plan~~
14 ~~for delivery of hospice care only if information contained in~~
15 ~~the plan submitted pursuant to subsection (1) is no longer~~
16 ~~applicable.~~

17 ~~(4) A hospice against which a revocation or suspension~~
18 ~~proceeding is pending at the time of license renewal may be~~
19 ~~issued a conditional license by the agency effective until~~
20 ~~final disposition of such proceeding. If judicial relief is~~
21 ~~sought from the final agency action, the court having~~
22 ~~jurisdiction may issue a conditional permit for the duration~~
23 ~~of the judicial proceeding.~~

24 ~~(3)(5) The agency shall not issue a license to a~~
25 ~~hospice that fails to receive a certificate of need under the~~
26 ~~provisions of part I of chapter 408 ss. 408.031-408.045. A~~
27 ~~licensed hospice is a health care facility as that term is~~
28 ~~used in s. 408.039(5) and is entitled to initiate or intervene~~
29 ~~in an administrative hearing.~~

30 ~~(4)(6) A freestanding hospice facility that is~~
31 ~~primarily engaged in providing inpatient and related services~~

1 and that is not otherwise licensed as a health care facility
2 shall be required to obtain a certificate of need. However, a
3 freestanding hospice facility with six or fewer beds shall not
4 be required to comply with institutional standards such as,
5 but not limited to, standards requiring sprinkler systems,
6 emergency electrical systems, or special lavatory devices.

7 Section 125. Section 400.6065, Florida Statutes, is
8 amended to read:

9 400.6065 Background screening.--

10 ~~(1) Upon receipt of a completed application under s.~~
11 ~~400.606, the agency shall require level 2 background screening~~
12 ~~on each of the following persons, who shall be considered~~
13 ~~employees for the purposes of conducting screening under~~
14 ~~chapter 435:~~

15 ~~(a) The hospice administrator and financial officer.~~

16 ~~(b) An officer or board member if the hospice is a~~
17 ~~firm, corporation, partnership, or association, or any person~~
18 ~~owning 5 percent or more of the hospice if the agency has~~
19 ~~probable cause to believe that such officer, board member, or~~
20 ~~owner has been convicted of any offense prohibited by s.~~
21 ~~435.04. For each officer, board member, or person owning 5~~
22 ~~percent or more who has been convicted of any such offense,~~
23 ~~the hospice shall submit to the agency a description and~~
24 ~~explanation of the conviction at the time of license~~
25 ~~application. This paragraph does not apply to a board member~~
26 ~~of a not for profit corporation or organization if the board~~
27 ~~member serves solely in a voluntary capacity, does not~~
28 ~~regularly take part in the day to day operational decisions of~~
29 ~~the corporation or organization, receives no remuneration for~~
30 ~~his or her services, and has no financial interest and has no~~
31 ~~family members with a financial interest in the corporation or~~

1 ~~organization, provided that the board member and the~~
2 ~~corporation or organization submit a statement affirming that~~
3 ~~the board member's relationship to the corporation or~~
4 ~~organization satisfies the requirements of this paragraph.~~

5 ~~(2) Proof of compliance with level 2 screening~~
6 ~~standards which has been submitted within the previous 5 years~~
7 ~~to meet any facility or professional licensure requirements of~~
8 ~~the agency or the Department of Health satisfies the~~
9 ~~requirements of this section.~~

10 ~~(3) The agency may grant a provisional license to a~~
11 ~~hospice applying for an initial license when each individual~~
12 ~~required by this section to undergo screening has completed~~
13 ~~the Department of Law Enforcement background check, but has~~
14 ~~not yet received results from the Federal Bureau of~~
15 ~~Investigation.~~

16 (1)(4) The agency shall require employment or
17 contractor screening as provided in chapter 435, using the
18 level 1 standards for screening set forth in that chapter, for
19 hospice personnel.

20 (2)(5) The agency may grant exemptions from
21 disqualification from employment under this section as
22 provided in s. 435.07.

23 ~~(6) The administration of each hospice must sign an~~
24 ~~affidavit annually, under penalty of perjury, stating that all~~
25 ~~personnel employed or contracted with on or after October 1,~~
26 ~~1998, who provide hospice services in a facility, or who enter~~
27 ~~the home of a patient in their service capacity, have been~~
28 ~~screened.~~

29 (3)(7) Proof of compliance with the screening
30 requirements of chapter 435 shall be accepted in lieu of the
31 requirements of this section if the person has been

1 continuously employed or registered without a breach in
2 service that exceeds 180 days, the proof of compliance is not
3 more than 2 years old, and the person has been screened, at
4 the discretion of the hospice.

5 ~~(4)(8)~~(a) It is a misdemeanor of the first degree,
6 punishable under s. 775.082 or s. 775.083, for any person
7 willfully, knowingly, or intentionally to:

8 1. Fail, by false statement, misrepresentation,
9 impersonation, or other fraudulent means, to disclose in any
10 application for voluntary or paid employment a material fact
11 used in making a determination as to such person's
12 qualifications to be employed or contracted with under this
13 section; or

14 ~~2. Operate or attempt to operate an entity licensed~~
15 ~~under this part with persons who do not meet the minimum~~
16 ~~standards for good moral character as contained in this~~
17 ~~section; or~~

18 ~~2.3.~~ Use information from the criminal records
19 obtained under this section for any purpose other than
20 screening as specified in this section, or release such
21 information to any other person for any purpose other than
22 screening under this section.

23 (b) It is a felony of the third degree, punishable
24 under s. 775.082, s. 775.083, or s. 775.084, for any person
25 willfully, knowingly, or intentionally to use information from
26 the juvenile records of a person obtained under this section
27 for any purpose other than screening for employment under this
28 section.

29 Section 126. Section 400.607, Florida Statutes, is
30 amended to read:

31

1 400.607 Denial, suspension, or revocation of license;
2 emergency actions; imposition of administrative fine; grounds;
3 injunctions.--

4 (1) The agency may deny, revoke, or suspend a license,
5 impose an action under s. 408.814, ~~or~~ impose an administrative
6 fine, which may not exceed \$5,000 per violation, for a
7 violation of any provision of this part, part II of chapter
8 408, or applicable rule in the manner provided in chapter 120.

9 (2) Any of the following actions by a licensed hospice
10 or any of its employees shall be grounds for action by the
11 agency against a hospice:

12 (a) A violation of the provisions of this part or
13 applicable rules.

14 (b) An intentional or negligent act materially
15 affecting the health or safety of a patient.

16 ~~(3) The agency may deny or revoke a license upon a~~
17 ~~determination that:~~

18 ~~(a) Persons subject to level 2 background screening~~
19 ~~under s. 400.6065 do not meet the screening standards of s.~~
20 ~~435.04, and exemptions from disqualification have not been~~
21 ~~provided by the agency.~~

22 ~~(b) An officer, board member, or person owning 5~~
23 ~~percent or more of the hospice has been excluded, permanently~~
24 ~~suspended, or terminated from the Medicare or Medicaid~~
25 ~~programs.~~

26 (3)(4) If, 3 months after the date of obtaining a
27 license, or at any time thereafter, a hospice does not have in
28 operation the home-care component of hospice care, the agency
29 shall immediately revoke the license of such hospice.

30 (4)(5) If, 12 months after the date of obtaining a
31 license pursuant to s. 400.606, or at any time thereafter, a

1 hospice does not have in operation the inpatient components of
2 hospice care, the agency shall immediately revoke the license
3 of such hospice.

4 ~~(6) The agency may institute a civil action in a court~~
5 ~~of competent jurisdiction to seek injunctive relief to enforce~~
6 ~~compliance with this part or any rule adopted pursuant to this~~
7 ~~part.~~

8 ~~(5)(7)~~ The remedies set forth in this section are
9 independent of and cumulative to other remedies provided by
10 law.

11 Section 127. Subsection (8) of section 400.6095,
12 Florida Statutes, is amended to read:

13 400.6095 Patient admission; assessment; plan of care;
14 discharge; death.--

15 (8) The hospice care team may withhold or withdraw
16 cardiopulmonary resuscitation if presented with an order not
17 to resuscitate executed pursuant to s. 401.45. The agency
18 ~~department~~ shall adopt rules providing for the implementation
19 of such orders. Hospice staff shall not be subject to criminal
20 prosecution or civil liability, nor be considered to have
21 engaged in negligent or unprofessional conduct, for
22 withholding or withdrawing cardiopulmonary resuscitation
23 pursuant to such an order and applicable rules ~~adopted by the~~
24 ~~department~~. The absence of an order to resuscitate executed
25 pursuant to s. 401.45 does not preclude a physician from
26 withholding or withdrawing cardiopulmonary resuscitation as
27 otherwise permitted by law.

28 Section 128. Subsection (5) of section 400.617,
29 Florida Statutes, is amended to read:

30 400.617 Legislative intent; purpose.--

31

1 (5) Rules of the ~~agency department~~ relating to adult
2 family-care homes shall be as minimal and flexible as possible
3 to ensure the protection of residents while minimizing the
4 obstacles that could inhibit the establishment of adult
5 family-care homes.

6 Section 129. Section 400.619, Florida Statutes, is
7 amended to read:

8 400.619 Licensure ~~application and renewal~~.--

9 (1) The requirements of part II of chapter 408 apply
10 to the provision of services that necessitate licensure
11 pursuant to this part and part II of chapter 408 and to
12 entities licensed by or applying for such licensure from the
13 Agency for Health Care Administration pursuant to this part.

14 ~~Each person who intends to be an adult family care home~~
15 ~~provider must apply for a license from the agency at least 90~~
16 ~~days before the applicant intends to operate the adult~~
17 ~~family care home.~~

18 (2) A person who intends to be an adult family-care
19 home provider must own or rent the adult family-care home that
20 is to be licensed and reside therein.

21 (3) In accordance with s. 408.805, an applicant or
22 licensee shall pay a fee for each license application
23 submitted under this part, part II of chapter 408, and
24 applicable rules. The amount of the fee shall be \$200 per
25 biennium. The agency shall notify a licensee at least 120 days
26 before the expiration date that license renewal is required to
27 continue operation. The notification must be provided
28 electronically or by mail delivery. Application for a license
29 or annual license renewal must be made on a form provided by
30 the agency, signed under oath, and must be accompanied by a
31 licensing fee of \$100 per year.

1 (4) Upon receipt of a completed license application or
2 license renewal, and the fee, the agency shall initiate a
3 level 1 background screening as provided under chapter 435 on
4 the adult family-care home provider, the designated relief
5 person, all adult household members, and all staff members.
6 The applicant or licensee is responsible for paying the fees
7 associated with obtaining the required screening. The agency
8 shall conduct an onsite visit to the home that is to be
9 licensed.

10 (a) Proof of compliance with level 1 screening
11 standards which has been submitted within the previous 5 years
12 to meet any facility or professional licensure requirements of
13 the agency or the Department of Health satisfies the
14 requirements of this subsection. Such proof must be
15 accompanied, under penalty of perjury, by a copy of the
16 person's current professional license and an affidavit of
17 current compliance with the background screening requirements.

18 (b) The person required to be screened must have been
19 continuously employed in the same type of occupation for which
20 the person is seeking employment without a breach in service
21 that exceeds 180 days, and proof of compliance with the level
22 1 screening requirement which is no more than 2 years old must
23 be provided. Proof of compliance shall be provided directly
24 from one employer or contractor to another, and not from the
25 person screened. Upon request, a copy of screening results
26 shall be provided to the person screened by the employer
27 retaining documentation of the screening.

28 ~~(5) The application must be accompanied by a~~
29 ~~description and explanation of any exclusions, permanent~~
30 ~~suspensions, or terminations of the applicant from~~
31

1 ~~participation in the Medicaid or Medicare programs or any~~
2 ~~other governmental health care or health insurance program.~~

3 ~~(6) Unless the adult family care home is a community~~
4 ~~residential home subject to chapter 419, the applicant must~~
5 ~~provide documentation, signed by the appropriate governmental~~
6 ~~official, that the home has met local zoning requirements for~~
7 ~~the location for which the license is sought.~~

8 (5)(7) Access to a licensed adult family-care home
9 must be provided at reasonable times for the appropriate
10 officials of the department, the Department of Health, the
11 Department of Children and Family Services, the agency, and
12 the State Fire Marshal, who are responsible for the
13 development and maintenance of fire, health, sanitary, and
14 safety standards, to inspect the facility to assure compliance
15 with these standards. In addition, access to a licensed adult
16 family-care home must be provided at reasonable times for the
17 local long-term care ombudsman council.

18 ~~(8) A license is effective for 1 year after the date~~
19 ~~of issuance unless revoked sooner. Each license must state~~
20 ~~the name of the provider, the address of the home to which the~~
21 ~~license applies, and the maximum number of residents of the~~
22 ~~home. Failure to timely file a license renewal application~~
23 ~~shall result in a late fee equal to 50 percent of the license~~
24 ~~fee.~~

25 ~~(9) A license is not transferable or applicable to any~~
26 ~~location or person other than the location and person~~
27 ~~indicated on the license.~~

28 (6)(10) The licensed maximum capacity of each adult
29 family-care home is based on the service needs of the
30 residents and the capability of the provider to meet the needs
31 of the residents. Any relative who lives in the adult

1 family-care home and who is a disabled adult or frail elder
2 must be included in that limitation.

3 ~~(7)(11)~~ Each adult family-care home must designate at
4 least one licensed space for a resident receiving optional
5 state supplementation. The Department of Children and Family
6 Services shall specify by rule the procedures to be followed
7 for referring residents who receive optional state
8 supplementation to adult family-care homes. Those homes
9 licensed as adult foster homes or assisted living facilities
10 prior to January 1, 1994, that convert to adult family-care
11 homes, are exempt from this requirement.

12 ~~(8)(12)~~ The agency may issue a conditional license to
13 a provider for the purpose of bringing the adult family-care
14 home into compliance with licensure requirements. A
15 conditional license must be limited to a specific period, not
16 exceeding 6 months. The department shall, by rule, establish
17 criteria for issuing conditional licenses.

18 ~~(13) All moneys collected under this section must be~~
19 ~~deposited into the Department of Elderly Affairs~~
20 ~~Administrative Trust Fund.~~

21 ~~(9)(14)~~ The agency ~~department~~ may adopt rules to
22 establish procedures, identify forms, specify documentation,
23 and clarify terms, as necessary, to administer this section
24 part II of chapter 408.

25 Section 130. Section 400.6194, Florida Statutes, is
26 amended to read:

27 400.6194 Denial, revocation, and ~~or~~ suspension of a
28 license.--In addition to the requirements of part II of
29 chapter 408, the agency may deny, suspend, or revoke a license
30 for any of the following reasons:
31

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

5 (2) An intentional or negligent act materially
6 affecting the health, safety, or welfare of the adult
7 family-care home residents.

8 ~~(3) Submission of fraudulent information or omission~~
9 ~~of any material fact on a license application or any other~~
10 ~~document required by the agency.~~

11 ~~(4) Failure to pay an administrative fine assessed~~
12 ~~under this part.~~

13 ~~(5) A violation of this part or adopted rules which~~
14 ~~results in conditions or practices that directly threaten the~~
15 ~~physical or emotional health, safety, or welfare of residents.~~

16 (3)(6) Failure to correct cited fire code violations
17 that threaten the health, safety, or welfare of residents.

18 ~~(7) Failure to submit a completed initial license~~
19 ~~application or to complete an application for license renewal~~
20 ~~within the specified timeframes.~~

21 ~~(8) Exclusion, permanent suspension, or termination of~~
22 ~~the provider from the Medicare or Medicaid program.~~

23 Section 131. Section 400.6196, Florida Statutes, is
24 amended to read:

25 400.6196 Classification of deficiencies;
26 administrative fines ~~Violations; penalties.--~~

27 (1) In accordance with part II of chapter 408 and in
28 addition to any other liability or penalty provided by law,
29 the agency may impose an administrative fine ~~a civil penalty~~
30 on a provider according to the following classification for a
31

1 violation of any provision of this part, part II of chapter
2 408, or applicable rule:

3 (a) Class I violations are those conditions or
4 practices related to the operation and maintenance of an adult
5 family-care home or to the care of residents which the agency
6 determines present an imminent danger to the residents or
7 guests of the facility or a substantial probability that death
8 or serious physical or emotional harm would result therefrom.
9 The condition or practice that constitutes a class I violation
10 must be abated or eliminated within 24 hours, unless a fixed
11 period, as determined by the agency, is required for
12 correction. A class I deficiency is subject to an
13 administrative fine in an amount not less than \$500 and not
14 exceeding \$1,000 for each violation. A fine may be levied
15 notwithstanding the correction of the deficiency.

16 (b) Class II violations are those conditions or
17 practices related to the operation and maintenance of an adult
18 family-care home or to the care of residents which the agency
19 determines directly threaten the physical or emotional health,
20 safety, or security of the residents, other than class I
21 violations. A class II violation is subject to an
22 administrative fine in an amount not less than \$250 and not
23 exceeding \$500 for each violation. A citation for a class II
24 violation must specify the time within which the violation is
25 required to be corrected. If a class II violation is corrected
26 within the time specified, no civil penalty shall be imposed,
27 unless it is a repeated offense.

28 (c) Class III violations are those conditions or
29 practices related to the operation and maintenance of an adult
30 family-care home or to the care of residents which the agency
31 determines indirectly or potentially threaten the physical or

1 | emotional health, safety, or security of residents, other than
2 | class I or class II violations. A class III violation is
3 | subject to an administrative fine in an amount not less than
4 | \$100 and not exceeding \$250 for each violation. A citation for
5 | a class III violation shall specify the time within which the
6 | violation is required to be corrected. If a class III
7 | violation is corrected within the time specified, no civil
8 | penalty shall be imposed, unless it is a repeated offense.

9 | (d) Class IV violations are those conditions or
10 | occurrences related to the operation and maintenance of an
11 | adult family-care home, or related to the required reports,
12 | forms, or documents, which do not have the potential of
13 | negatively affecting the residents. A provider that does not
14 | correct a class IV violation within the time limit specified
15 | by the agency is subject to an administrative fine in an
16 | amount not less than \$50 and not exceeding \$100 for each
17 | violation. Any class IV violation that is corrected during the
18 | time the agency survey is conducted will be identified as an
19 | agency finding and not as a violation.

20 | (2) The agency may impose an administrative fine for
21 | violations which do not qualify as class I, class II, class
22 | III, or class IV violations. The amount of the fine shall not
23 | exceed \$250 for each violation or \$2,000 in the aggregate.

24 | Unclassified violations include:

25 | (a) Violating any term or condition of a license.

26 | (b) Violating any provision of ~~rule adopted under~~ this
27 | part, part II of chapter 408, or applicable rules.

28 | (c) Failure to follow the criteria and procedures
29 | provided under part I of chapter 394 relating to the
30 | transportation, voluntary admission, and involuntary
31 | examination of adult family-care home residents.

1 (d) Exceeding licensed capacity.

2 (e) Providing services beyond the scope of the
3 license.

4 (f) Violating a moratorium.

5 ~~(3) Each day during which a violation occurs~~
6 ~~constitutes a separate offense.~~

7 ~~(3)(4)~~ In determining whether a penalty is to be
8 imposed, and in fixing the amount of any penalty to be
9 imposed, the agency must consider:

10 (a) The gravity of the violation.

11 (b) Actions taken by the provider to correct a
12 violation.

13 (c) Any previous violation by the provider.

14 (d) The financial benefit to the provider of
15 committing or continuing the violation.

16 ~~(4)(5)~~ As an alternative to or in conjunction with an
17 administrative action against a provider, the agency may
18 request a plan of corrective action that demonstrates a good
19 faith effort to remedy each violation by a specific date,
20 subject to the approval of the agency.

21 ~~(5)(6)~~ The agency ~~department~~ shall set forth, by rule,
22 notice requirements and procedures for correction of
23 deficiencies.

24 ~~(7) Civil penalties paid by a provider must be~~
25 ~~deposited into the Department of Elderly Affairs~~
26 ~~Administrative Trust Fund and used to offset the expenses of~~
27 ~~departmental training and education for adult family care home~~
28 ~~providers.~~

29 ~~(8) The agency may impose an immediate moratorium on~~
30 ~~admissions to any adult family care home if the agency finds~~
31 ~~that a condition in the home presents a threat to the health,~~

1 ~~safety, or welfare of its residents. The department may by~~
2 ~~rule establish facility conditions that constitute grounds for~~
3 ~~imposing a moratorium and establish procedures for imposing~~
4 ~~and lifting a moratorium.~~

5 Section 132. Section 400.621, Florida Statutes, is
6 amended to read:

7 400.621 Rules and standards relating to adult
8 family-care homes.--

9 (1) The agency ~~department~~, in consultation with the
10 Department of Health, the Department of Children and Family
11 Services, and the department ~~agency~~ shall, by rule, establish
12 minimum standards to ensure the health, safety, and well-being
13 of each resident in the adult family-care home pursuant to
14 this part and part II of chapter 408. The rules must address:

15 (a) Requirements for the physical site of the facility
16 and facility maintenance.

17 (b) Services that must be provided to all residents of
18 an adult family-care home and standards for such services,
19 which must include, but need not be limited to:

- 20 1. Room and board.
- 21 2. Assistance necessary to perform the activities of
- 22 daily living.
- 23 3. Assistance necessary to administer medication.
- 24 4. Supervision of residents.
- 25 5. Health monitoring.
- 26 6. Social and leisure activities.

27 (c) Standards and procedures for license application
28 and annual license renewal, advertising, proper management of
29 each resident's funds and personal property and personal
30 affairs, financial ability to operate, medication management,
31

1 inspections, complaint investigations, and facility, staff,
2 and resident records.

3 (d) Qualifications, training, standards, and
4 responsibilities for providers and staff.

5 (e) Compliance with chapter 419, relating to community
6 residential homes.

7 (f) Criteria and procedures for determining the
8 appropriateness of a resident's placement and continued
9 residency in an adult family-care home. A resident who
10 requires 24-hour nursing supervision may not be retained in an
11 adult family-care home unless such resident is an enrolled
12 hospice patient and the resident's continued residency is
13 mutually agreeable to the resident and the provider.

14 (g) Procedures for providing notice and assuring the
15 least possible disruption of residents' lives when residents
16 are relocated, an adult family-care home is closed, or the
17 ownership of an adult family-care home is transferred.

18 (h) Procedures to protect the residents' rights as
19 provided in s. 400.628.

20 (i) Procedures to promote the growth of adult
21 family-care homes as a component of a long-term care system.

22 (j) Procedures to promote the goal of aging in place
23 for residents of adult family-care homes.

24 (2) The agency ~~department~~ shall by rule provide
25 minimum standards and procedures for emergencies. Pursuant to
26 s. 633.022, the State Fire Marshal, in consultation with the
27 department and the agency, shall adopt uniform firesafety
28 standards for adult family-care homes.

29 (3) The agency ~~department~~ shall adopt rules providing
30 for the implementation of orders not to resuscitate. The
31 provider may withhold or withdraw cardiopulmonary

1 resuscitation if presented with an order not to resuscitate
2 executed pursuant to s. 401.45. The provider shall not be
3 subject to criminal prosecution or civil liability, nor be
4 considered to have engaged in negligent or unprofessional
5 conduct, for withholding or withdrawing cardiopulmonary
6 resuscitation pursuant to such an order and applicable rules
7 ~~adopted by the department.~~

8 ~~(4) The provider of any adult family care home that is~~
9 ~~in operation at the time any rules are adopted or amended~~
10 ~~under this part may be given a reasonable time, not exceeding~~
11 ~~6 months, within which to comply with the new or revised rules~~
12 ~~and standards.~~

13 Section 133. Subsection (3) of section 400.6211,
14 Florida Statutes, is amended to read:

15 400.6211 Training and education programs.--

16 (3) Effective January 1, 2004, providers must complete
17 the training and education program within a reasonable time
18 determined by the agency department. Failure to complete the
19 training and education program within the time set by the
20 agency department is a violation of this part and subjects the
21 provider to revocation of the license.

22 Section 134. Section 400.622, Florida Statutes, is
23 repealed.

24 Section 135. Subsection (2) of section 400.625,
25 Florida Statutes, is amended to read:

26 400.625 Residency agreements.--

27 (2) Each residency agreement must specify the personal
28 care and accommodations to be provided by the adult
29 family-care home, the rates or charges, a requirement of at
30 least 30 days' notice before a rate increase, and any other
31 provisions required by rule of the agency department.

1 Section 136. Section 400.801, Florida Statutes, is
2 amended to read:

3 400.801 Homes for special services.--

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

5 (a) "Agency" means the "Agency for Health Care
6 Administration."

7 (b) "Home for special services" means a site where
8 specialized health care services are provided, including
9 personal and custodial care, but not continuous nursing
10 services.

11 (2) The requirements of part II of chapter 408 apply
12 to the provision of services that necessitate licensure
13 pursuant to s. 400.801 and part II of chapter 408 and to
14 entities licensed by or applying for such licensure from the
15 Agency for Health Care Administration pursuant to this
16 section. However, each applicant for licensure and licensee is
17 exempt from the provisions of s. 408.810(7)-(10). A person
18 must obtain a license from the agency to operate a home for
19 special services. A license is valid for 1 year.

20 (3) In accordance with s. 408.805, an applicant or
21 licensee shall pay a fee for each license application
22 submitted under this part, part II of chapter 408, and
23 applicable rules. The amount of the fee shall be established
24 by rule and may not be more than \$2,000 per biennium. The
25 application for a license under this section must be made on a
26 form provided by the agency. A nonrefundable license fee of
27 not more than \$1,000 must be submitted with the license
28 application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~(5) Application for license renewal must be submitted~~
28 ~~90 days before the expiration of the license.~~

29 ~~(6) A change of ownership or control of a home for~~
30 ~~special services must be reported to the agency in writing at~~
31 ~~least 60 days before the change is scheduled to take effect.~~

1 ~~(4)(7)~~ The agency may ~~shall~~ adopt rules for
2 implementing and enforcing this section and part II of chapter
3 408.

4 ~~(8)(a)~~ ~~It is unlawful for any person to establish,~~
5 ~~conduct, manage, or operate a home for special services~~
6 ~~without obtaining a license from the agency.~~

7 ~~(b)~~ ~~It is unlawful for any person to offer or~~
8 ~~advertise to the public, in any medium whatever, specialized~~
9 ~~health care services without obtaining a license from the~~
10 ~~agency.~~

11 ~~(c)~~ ~~It is unlawful for a holder of a license issued~~
12 ~~under this section to advertise or represent to the public~~
13 ~~that it holds a license for a type of facility other than the~~
14 ~~facility for which its license is issued.~~

15 ~~(5)(9)(a)~~ In accordance with part II of chapter 408, a
16 violation of any provision of this section, part II of chapter
17 408, or applicable rules adopted by the agency for
18 ~~implementing this section~~ is punishable by payment of an
19 administrative fine not to exceed \$5,000.

20 ~~(b)~~ ~~A violation of subsection (8) or rules adopted~~
21 ~~under that subsection is a misdemeanor of the first degree,~~
22 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
23 ~~of continuing violation is a separate offense.~~

24 Section 137. Section 400.805, Florida Statutes, is
25 amended to read:

26 400.805 Transitional living facilities.--

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

28 (a) "Agency" means the Agency for Health Care
29 Administration.

30 (b) "Department" means the Department of Health.

31

1 (c) "Transitional living facility" means a site where
2 specialized health care services are provided, including, but
3 not limited to, rehabilitative services, community reentry
4 training, aids for independent living, and counseling to
5 spinal-cord-injured persons and head-injured persons. This
6 term does not include a hospital licensed under chapter 395 or
7 any federally operated hospital or facility.

8 (2)(a) The requirements of part II of chapter 408
9 apply to the provision of services that necessitate licensure
10 pursuant to s. 400.805 and part II of chapter 408 and to
11 entities licensed by or applying for such licensure from the
12 Agency for Health Care Administration pursuant to this
13 section. However, each applicant for licensure and licensee is
14 exempt from the provisions of s. 408.810(7)-(10). A person
15 must obtain a license from the agency to operate a
16 transitional living facility. A license issued under this
17 section is valid for 1 year.

18 (b) In accordance with s. 408.805, an applicant or
19 licensee shall pay a fee for each license application
20 submitted under this part, part II of chapter 408, and
21 applicable rules. The amount of the fee shall be comprised of
22 a license fee of \$4,000 and a per-bed fee of \$78.50 each
23 biennium, unless modified by rule. The application for a
24 license must be made on a form provided by the agency. A
25 nonrefundable license fee of \$2,000 and a fee of up to \$39.25
26 per bed must be submitted with the license application.

27 (c) The agency may not issue a license to an applicant
28 until the agency receives notice from the department as
29 provided in paragraph(3)(b)(6)(b).

30 ~~(3) Each applicant for licensure must comply with the~~
31 ~~following requirements:~~

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

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

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

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

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

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

21 ~~(f) Each applicant must submit to the agency a~~
22 ~~description and explanation of any conviction of an offense~~
23 ~~prohibited under the level 2 standards of chapter 435 by a~~
24 ~~member of the board of directors of the applicant, its~~
25 ~~officers, or any individual owning 5 percent or more of the~~
26 ~~applicant. This requirement does not apply to a director of a~~
27 ~~not for profit corporation or organization if the director~~
28 ~~serves solely in a voluntary capacity for the corporation or~~
29 ~~organization, does not regularly take part in the day to day~~
30 ~~operational decisions of the corporation or organization,~~
31 ~~receives no remuneration for his or her services on the~~

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

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

15 ~~(h) The agency may deny or revoke licensure if the~~
16 ~~applicant:~~

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

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

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

26 ~~(4) An application for renewal of license must be~~
27 ~~submitted 90 days before the expiration of the license. Upon~~
28 ~~renewal of licensure, each applicant must submit to the~~
29 ~~agency, under penalty of perjury, an affidavit as set forth in~~
30 ~~paragraph (3)(d).~~

31

1 ~~(5) A change of ownership or control of a transitional~~
2 ~~living facility must be reported to the agency in writing at~~
3 ~~least 60 days before the change is scheduled to take effect.~~

4 (3)~~(6)~~(a) The agency shall adopt rules in consultation
5 with the department governing the physical plant of
6 transitional living facilities and the fiscal management of
7 transitional living facilities.

8 (b) The department shall adopt rules in consultation
9 with the agency governing the services provided to clients of
10 transitional living facilities. The department shall enforce
11 all requirements for providing services to the facility's
12 clients. The department must notify the agency when it
13 determines that an applicant for licensure meets the service
14 requirements adopted by the department.

15 (c) The agency and the department shall enforce
16 requirements under this section, as such requirements relate
17 to them respectively, and their respective adopted rules.

18 ~~(7)(a) It is unlawful for any person to establish,~~
19 ~~conduct, manage, or operate a transitional living facility~~
20 ~~without obtaining a license from the agency.~~

21 ~~(b) It is unlawful for any person to offer or~~
22 ~~advertise to the public, in any medium whatever, services or~~
23 ~~care defined in paragraph (1)(c) without obtaining a license~~
24 ~~from the agency.~~

25 ~~(c) It is unlawful for a holder of a license issued~~
26 ~~under this section to advertise or represent to the public~~
27 ~~that it holds a license for a type of facility other than the~~
28 ~~facility for which its license is issued.~~

29 (4)~~(8)~~ Any designated officer or employee of the
30 agency, of the state, or of the local fire marshal may enter
31 unannounced upon and into the premises of any facility

1 licensed under this section in order to determine the state of
2 compliance with this section and the rules or standards in
3 force under this section. The right of entry and inspection
4 also extends to any premises that the agency has reason to
5 believe are being operated or maintained as a facility without
6 a license; but such an entry or inspection may not be made
7 without the permission of the owner or person in charge of the
8 facility unless a warrant that authorizes the entry is first
9 obtained from the circuit court. The warrant requirement
10 extends only to a facility that the agency has reason to
11 believe is being operated or maintained as a facility without
12 a license. An application for a license or renewal thereof
13 which is made under this section constitutes permission for,
14 and acquiescence in, any entry or inspection of the premises
15 for which the license is sought, in order to facilitate
16 verification of the information submitted on or in connection
17 with the application; to discover, investigate, and determine
18 the existence of abuse or neglect; or to elicit, receive,
19 respond to, and resolve complaints. A current valid license
20 constitutes unconditional permission for, and acquiescence in,
21 any entry or inspection of the premises by authorized
22 personnel. The agency retains the right of entry and
23 inspection of facilities that have had a license revoked or
24 suspended within the previous 24 months, to ensure that the
25 facility is not operating unlawfully. However, before the
26 facility is entered, a statement of probable cause must be
27 filed with the director of the agency, who must approve or
28 disapprove the action within 48 hours. Probable cause
29 includes, but is not limited to, evidence that the facility
30 holds itself out to the public as a provider of personal
31 assistance services, or the receipt by the advisory council on

1 brain and spinal cord injuries of a complaint about the
2 facility.

3 ~~(5)(9)~~ The agency may institute injunctive proceedings
4 in a court of competent jurisdiction for temporary or
5 permanent relief to:

6 (a) Enforce this section or any minimum standard,
7 rule, or order issued pursuant thereto if the agency's effort
8 to correct a violation through administrative fines has failed
9 or when the violation materially affects the health, safety,
10 or welfare of residents; or

11 (b) Terminate the operation of a facility if a
12 violation of this section or of any standard or rule adopted
13 pursuant thereto exists which materially affects the health,
14 safety, or welfare of residents.

15
16 The Legislature recognizes that, in some instances, action is
17 necessary to protect residents of facilities from immediately
18 life-threatening situations. If it appears by competent
19 evidence or a sworn, substantiated affidavit that a temporary
20 injunction should issue, the court, pending the determination
21 on final hearing, shall enjoin operation of the facility.

22 ~~(10) The agency may impose an immediate moratorium on~~
23 ~~admissions to a facility when the agency determines that any~~
24 ~~condition in the facility presents a threat to the health,~~
25 ~~safety, or welfare of the residents in the facility. If a~~
26 ~~facility's license is denied, revoked, or suspended, the~~
27 ~~facility may be subject to the immediate imposition of a~~
28 ~~moratorium on admissions to run concurrently with licensure~~
29 ~~denial, revocation, or suspension.~~

30 (6)(11)(a) In accordance with part II of chapter 408,
31 a violation of any provision of this section, part II of

1 ~~chapter 408, or applicable rules adopted by the agency or~~
2 ~~department under this section~~ is punishable by payment of an
3 administrative or a civil penalty fine not to exceed \$5,000.

4 ~~(b) A violation of subsection (7) or rules adopted~~
5 ~~under that subsection is a misdemeanor of the first degree,~~
6 ~~punishable as provided in s. 775.082 or s. 775.083. Each day~~
7 ~~of a continuing violation is a separate offense.~~

8 Section 138. Subsection (4) of section 400.902,
9 Florida Statutes, is amended to read:

10 400.902 Definitions.--As used in this part, the term:

11 (4) "Owner or operator" means a licensee ~~any~~
12 ~~individual who has general administrative charge of a PPEC~~
13 ~~center.~~

14 Section 139. Subsection (3) is added to section
15 400.903, Florida Statutes, to read:

16 400.903 PPEC centers to be licensed; exemptions.--

17 (3) The requirements of part II of chapter 408 apply
18 to the provision of services that necessitate licensure
19 pursuant to this part and part II of chapter 408 and to
20 entities licensed by or applying for such licensure from the
21 Agency for Health Care Administration pursuant to this part.
22 However, each applicant for licensure and licensee is exempt
23 from the provisions of s. 408.810(10).

24 Section 140. Section 400.905, Florida Statutes, is
25 amended to read:

26 400.905 License required; fee; exemption; display.--

27 ~~(1)(a) It is unlawful to operate or maintain a PPEC~~
28 ~~center without first obtaining from the agency a license~~
29 ~~authorizing such operation. The agency is responsible for~~
30 ~~licensing PPEC centers in accordance with the provisions of~~
31 ~~this part.~~

1 ~~(b) Any person who violates paragraph (a) is guilty of~~
2 ~~a felony of the third degree, punishable as provided in s.~~
3 ~~775.082, s. 775.083, or s. 775.084.~~

4 ~~(1)(2)~~ Separate licenses are required for PPEC centers
5 maintained on separate premises, even though they are operated
6 under the same management. Separate licenses are not required
7 for separate buildings on the same grounds.

8 ~~(2)(3)~~ In accordance with s. 408.805, an applicant or
9 licensee shall pay a fee for each license application
10 submitted under this part, part II of chapter 408, and
11 applicable rules. The amount of the fee shall be established
12 by rule and may not be less than \$1,000 or more than \$3,000
13 per biennium. The annual license fee required of a PPEC center
14 ~~shall be in an amount determined by the agency to be~~
15 ~~sufficient to cover the agency's costs in carrying out its~~
16 ~~responsibilities under this part, but shall not be less than~~
17 ~~\$500 or more than \$1,500.~~

18 ~~(3)(4)~~ County-operated or municipally operated PPEC
19 centers applying for licensure under this part are exempt from
20 the payment of license fees.

21 ~~(5) The license shall be displayed in a conspicuous~~
22 ~~place inside the PPEC center.~~

23 ~~(6) A license shall be valid only in the possession of~~
24 ~~the individual, firm, partnership, association, or corporation~~
25 ~~to whom it is issued and shall not be subject to sale,~~
26 ~~assignment, or other transfer, voluntary or involuntary; nor~~
27 ~~shall a license be valid for any premises other than that for~~
28 ~~which originally issued.~~

29 ~~(7) Any license granted by the agency shall state the~~
30 ~~maximum capacity of the facility, the date the license was~~
31

1 ~~issued, the expiration date of the license, and any other~~
2 ~~information deemed necessary by the agency.~~

3 Section 141. Section 400.906, Florida Statutes, is
4 repealed.

5 Section 142. Section 400.907, Florida Statutes, is
6 amended to read:

7 400.907 Denial, suspension, and revocation of
8 licensure; administrative fines; grounds.--

9 (1) In accordance with part II of chapter 408, the
10 agency may deny, revoke, and ~~or~~ suspend a license and ~~or~~
11 impose an administrative fine for a violation of any provision
12 of this part, part II of chapter 408, or applicable rule ~~in~~
13 ~~the manner provided in chapter 120.~~

14 (2) Any of the following actions by an employee of a
15 PPEC center ~~or its employee~~ is grounds for action by the
16 agency against a PPEC center or its employee:

17 (a) An intentional or negligent act materially
18 affecting the health or safety of children in the PPEC center.

19 (b) A violation of the provisions of this part, part
20 II of chapter 408, or applicable ~~of any standards or rules~~
21 ~~adopted pursuant to this part.~~

22 (c) Multiple and repeated violations of this part or
23 of minimum standards or rules adopted pursuant to this part.

24 ~~(3) The agency shall be responsible for all~~
25 ~~investigations and inspections conducted pursuant to this~~
26 ~~part.~~

27 Section 143. Section 400.908, Florida Statutes, is
28 amended to read:

29 400.908 Administrative fines; disposition of fees and
30 fines.--

31

1 (1)(a) If the agency determines that a PPEC center is
2 ~~being operated without a license or is otherwise~~ not in
3 compliance with ~~rules adopted under this part,~~ part II of
4 chapter 408, or applicable rules, the agency, ~~notwithstanding~~
5 ~~any other administrative action it takes,~~ shall make a
6 reasonable attempt to discuss each violation and recommended
7 corrective action with the owner of the PPEC center prior to
8 written notification thereof. The agency may request that the
9 PPEC center submit a corrective action plan that ~~which~~
10 demonstrates a good faith effort to remedy each violation by a
11 specific date, subject to the approval of the agency.

12 (b) In accordance with part II of chapter 408, the
13 agency may fine a PPEC center or employee found in violation
14 of ~~rules adopted pursuant to this part,~~ part II of chapter
15 408, or applicable rules in an amount not to exceed \$500 for
16 each violation. Such fine may not exceed \$5,000 in the
17 aggregate.

18 (c) The failure to correct a violation by the date set
19 by the agency, or the failure to comply with an approved
20 corrective action plan, is a separate violation for each day
21 such failure continues, unless the agency approves an
22 extension to a specific date.

23 ~~(d) If a PPEC center desires to appeal any agency~~
24 ~~action under this section and the fine is upheld, the violator~~
25 ~~shall pay the fine, plus interest at the legal rate specified~~
26 ~~in s. 687.01, for each day beyond the date set by the agency~~
27 ~~for payment of the fine.~~

28 (2) In determining if a fine is to be imposed and in
29 fixing the amount of any fine, the agency shall consider the
30 following factors:
31

1 (a) The gravity of the violation, including the
2 probability that death or serious physical or emotional harm
3 to a child will result or has resulted, the severity of the
4 actual or potential harm, and the extent to which the
5 provisions of the applicable statutes or rules were violated.

6 (b) Actions taken by the owner or operator to correct
7 violations.

8 (c) Any previous violations.

9 (d) The financial benefit to the PPEC center of
10 committing or continuing the violation.

11 ~~(3) Fees and fines received by the agency under this~~
12 ~~part shall be deposited in the Health Care Trust Fund created~~
13 ~~in s. 408.16.~~

14 Section 144. Sections 400.910 and 400.911, Florida
15 Statutes, are repealed.

16 Section 145. Section 400.912, Florida Statutes, is
17 amended to read:

18 400.912 Closing of a PPEC center.--

19 ~~(1) Whenever a PPEC center voluntarily discontinues~~
20 ~~operation, it shall inform the agency in writing at least 30~~
21 ~~days before the discontinuance of operation. The PPEC center~~
22 ~~shall also, at such time, inform each child's legal guardian~~
23 ~~of the fact and the proposed time of such discontinuance.~~

24 ~~(2) Immediately upon discontinuance of the operation~~
25 ~~of a PPEC center, the owner or operator shall surrender the~~
26 ~~license therefor to the agency and the license shall be~~
27 ~~canceled.~~

28 Section 146. Section 400.913, Florida Statutes, is
29 repealed.

30 Section 147. Subsection (1) of section 400.914,
31 Florida Statutes, is amended to read:

1 400.914 Rules establishing standards.--

2 (1) Pursuant to the intention of the Legislature to
3 provide safe and sanitary facilities and healthful programs,
4 the agency in conjunction with the Division of Children's
5 Medical Services Prevention and Intervention of the Department
6 of Health shall adopt and publish rules to implement the
7 provisions of this part and part II of chapter 408, which
8 shall include reasonable and fair standards. Any conflict
9 between these standards and those that may be set forth in
10 local, county, or city ordinances shall be resolved in favor
11 of those having statewide effect. Such standards shall relate
12 to:

13 (a) The assurance that PPEC services are family
14 centered and provide individualized medical, developmental,
15 and family training services.

16 (b) The maintenance of PPEC centers, not in conflict
17 with the provisions of chapter 553 and based upon the size of
18 the structure and number of children, relating to plumbing,
19 heating, lighting, ventilation, and other building conditions,
20 including adequate space, which will ensure the health,
21 safety, comfort, and protection from fire of the children
22 served.

23 (c) The appropriate provisions of the most recent
24 edition of the "Life Safety Code" (NFPA-101) shall be applied.

25 (d) The number and qualifications of all personnel who
26 have responsibility for the care of the children served.

27 (e) All sanitary conditions within the PPEC center and
28 its surroundings, including water supply, sewage disposal,
29 food handling, and general hygiene, and maintenance thereof,
30 which will ensure the health and comfort of children served.
31

1 (f) Programs and basic services promoting and
2 maintaining the health and development of the children served
3 and meeting the training needs of the children's legal
4 guardians.

5 (g) Supportive, contracted, other operational, and
6 transportation services.

7 (h) Maintenance of appropriate medical records, data,
8 and information relative to the children and programs. Such
9 records shall be maintained in the facility for inspection by
10 the agency.

11 Section 148. Section 400.915, Florida Statutes, is
12 amended to read.

13 400.915 Construction and renovation;
14 requirements.--The requirements for the construction or
15 renovation of a PPEC center shall comply with:

16 (1) The provisions of chapter 553, which pertain to
17 building construction standards, including plumbing,
18 electrical code, glass, manufactured buildings, accessibility
19 for the physically disabled;

20 (2) The minimum standards for physical facilities in
21 rule 10M-12.003, Florida Administrative Code, Child Care
22 Standards; and

23 (3) The standards or rules adopted pursuant to this
24 part ~~and part II of chapter 408.~~

25 Section 149. Sections 400.916 and 400.917, Florida
26 Statutes, are repealed.

27 Section 150. Section 400.925, Florida Statutes, is
28 amended to read:

29 400.925 Definitions.--As used in this part, the term:

30 (1) "Accrediting organizations" means the Joint
31 Commission on Accreditation of Healthcare Organizations or

1 other national accreditation agencies whose standards for
2 accreditation are comparable to those required by this part
3 for licensure.

4 ~~(2)~~ "Affiliated person" means any person who directly
5 or indirectly manages, controls, or oversees the operation of
6 a corporation or other business entity that is a licensee,
7 regardless of whether such person is a partner, shareholder,
8 owner, officer, director, agent, or employee of the entity.

9 (2)~~(3)~~ "Agency" means the Agency for Health Care
10 Administration.

11 ~~(4)~~ "Applicant" means an individual applicant in the
12 case of a sole proprietorship, or any officer, director,
13 agent, managing employee, general manager, or affiliated
14 person, or any partner or shareholder having an ownership
15 interest equal to 5 percent or greater in the corporation,
16 partnership, or other business entity.

17 (3)~~(5)~~ "Consumer" or "patient" means any person who
18 uses home medical equipment in his or her place of residence.

19 (4)~~(6)~~ "Department" means the Department of Children
20 and Family Services.

21 (5)~~(7)~~ "General manager" means the individual who has
22 the general administrative charge of the premises of a
23 licensed home medical equipment provider.

24 (6)~~(8)~~ "Home medical equipment" includes any product
25 as defined by the Federal Drug Administration's Drugs, Devices
26 and Cosmetics Act, any products reimbursed under the Medicare
27 Part B Durable Medical Equipment benefits, or any products
28 reimbursed under the Florida Medicaid durable medical
29 equipment program. Home medical equipment includes oxygen and
30 related respiratory equipment; manual, motorized, or
31 customized wheelchairs and related seating and positioning,

1 | but does not include prosthetics or orthotics or any splints,
2 | braces, or aids custom fabricated by a licensed health care
3 | practitioner; motorized scooters; personal transfer systems;
4 | and specialty beds, for use by a person with a medical need.

5 | ~~(7)(9)~~ "Home medical equipment provider" means any
6 | person or entity that sells or rents or offers to sell or rent
7 | to or for a consumer:

8 | (a) Any home medical equipment and services; or

9 | (b) Home medical equipment that requires any home
10 | medical equipment services.

11 | ~~(8)(10)~~ "Home medical equipment provider personnel"
12 | means persons who are employed by or under contract with a
13 | home medical equipment provider.

14 | ~~(9)(11)~~ "Home medical equipment services" means
15 | equipment management and consumer instruction, including
16 | selection, delivery, setup, and maintenance of equipment, and
17 | other related services for the use of home medical equipment
18 | in the consumer's regular or temporary place of residence.

19 | ~~(10)(12)~~ "Licensee" means the person or entity to whom
20 | a license to operate as a home medical equipment provider is
21 | issued by the agency.

22 | ~~(11)(13)~~ "Moratorium" has the same meaning as in s.
23 | 408.803, except that means a mandated temporary cessation or
24 | suspension of the sale, rental, or offering of equipment after
25 | the imposition of the moratorium. services related to
26 | equipment sold or rented prior to the moratorium must be
27 | continued without interruption, unless deemed otherwise by the
28 | agency.

29 | ~~(12)(14)~~ "Person" means any individual, firm,
30 | partnership, corporation, or association.

31 |

1 ~~(13)~~~~(15)~~ "Premises" means those buildings and
2 equipment which are located at the address of the licensed
3 home medical equipment provider for the provision of home
4 medical equipment services, which are in such reasonable
5 proximity as to appear to the public to be a single provider
6 location, and which comply with zoning ordinances.

7 ~~(14)~~~~(16)~~ "Residence" means the consumer's home or
8 place of residence, which may include nursing homes, assisted
9 living facilities, transitional living facilities, adult
10 family-care homes, or other congregate residential facilities.

11 Section 151. Subsections (3) and paragraphs (d) and
12 (e) of subsection (6) of section 400.93, Florida Statutes, are
13 amended to read:

14 400.93 Licensure required; exemptions; unlawful acts;
15 penalties.--

16 (3) The requirements of part II of chapter 408 apply
17 to the provision of services that necessitate licensure
18 pursuant to this part and part II of chapter 408 and to
19 entities licensed by or applying for such licensure from the
20 Agency for Health Care Administration pursuant to this part.
21 However, each applicant for licensure and licensee is exempt
22 from the provisions of s. 408.810(10). ~~A home medical~~
23 ~~equipment provider must be licensed by the agency to operate~~
24 ~~in this state or to provide home medical equipment and~~
25 ~~services to consumers in this state. A standard license issued~~
26 ~~to a home medical equipment provider, unless sooner suspended~~
27 ~~or revoked, expires 2 years after its effective date.~~

28 (6)

29 ~~(d) The following penalties shall be imposed for~~
30 ~~operating an unlicensed home medical equipment provider:~~

31

1 ~~1. Any person or entity who operates an unlicensed~~
2 ~~provider commits a felony of the third degree.~~

3 ~~2. For any person or entity who has received~~
4 ~~government reimbursement for services provided by an~~
5 ~~unlicensed provider, the agency shall make a fraud referral to~~
6 ~~the appropriate government reimbursement program.~~

7 ~~3. For any licensee found to be concurrently operating~~
8 ~~licensed and unlicensed provider premises, the agency may~~
9 ~~impose a fine or moratorium, or revoke existing licenses of~~
10 ~~any or all of the licensee's licensed provider locations until~~
11 ~~such time as the unlicensed provider premises is licensed.~~

12 ~~(c) A provider found to be operating without a license~~
13 ~~may apply for licensure, and must cease operations until a~~
14 ~~license is awarded by the agency.~~

15 Section 152. Section 400.931, Florida Statutes, is
16 amended to read:

17 400.931 Application for license; fee; provisional
18 license; temporary permit.--

19 ~~(1) Application for an initial license or for renewal~~
20 ~~of an existing license must be made under oath to the agency~~
21 ~~on forms furnished by it and must be accompanied by the~~
22 ~~appropriate license fee as provided in subsection (12).~~

23 (1)(2) The applicant must file with the application
24 satisfactory proof that the home medical equipment provider is
25 in compliance with this part and applicable rules, including:

26 (a) A report, by category, of the equipment to be
27 provided, indicating those offered either directly by the
28 applicant or through contractual arrangements with existing
29 providers. Categories of equipment include:

- 30 1. Respiratory modalities.
31 2. Ambulation aids.

1 3. Mobility aids.

2 4. Sickroom setup.

3 5. Disposables.

4 (b) A report, by category, of the services to be
5 provided, indicating those offered either directly by the
6 applicant or through contractual arrangements with existing
7 providers. Categories of services include:

8 1. Intake.

9 2. Equipment selection.

10 3. Delivery.

11 4. Setup and installation.

12 5. Patient training.

13 6. Ongoing service and maintenance.

14 7. Retrieval.

15 (c) A listing of those with whom the applicant
16 contracts, both the providers the applicant uses to provide
17 equipment or services to its consumers and the providers for
18 whom the applicant provides services or equipment.

19 ~~(2)(3)~~ As an alternative to submitting proof of
20 financial ability to operate as required in s. 408.810(8), the
21 applicant may submit ~~The applicant for initial licensure must~~
22 ~~demonstrate financial ability to operate, which may be~~
23 ~~accomplished by the submission of a \$50,000 surety bond to the~~
24 ~~agency.~~

25 ~~(4)~~ ~~An applicant for renewal who has demonstrated~~
26 ~~financial inability to operate must demonstrate financial~~
27 ~~ability to operate.~~

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

30 ~~(a)~~ ~~Upon receipt of a completed, signed, and dated~~
31 ~~application, the agency shall require background screening of~~

1 ~~the applicant, in accordance with the level 2 standards for~~
2 ~~screening set forth in chapter 435. As used in this~~
3 ~~subsection, the term "applicant" means the general manager and~~
4 ~~the financial officer or similarly titled individual who is~~
5 ~~responsible for the financial operation of the licensed~~
6 ~~facility.~~

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

13 ~~(c) Proof of compliance with the level 2 background~~
14 ~~screening requirements of chapter 435 which has been submitted~~
15 ~~within the previous 5 years in compliance with any other~~
16 ~~health care licensure requirements of this state is acceptable~~
17 ~~in fulfillment of paragraph (a).~~

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

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

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

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

19 ~~(g) The agency may deny or revoke licensure to any~~
20 ~~potential licensee if any applicant:~~

21 ~~1. Has falsely represented a material fact in the~~
22 ~~application required by paragraphs (d) and (e), or has omitted~~
23 ~~any material fact from the application required by paragraphs~~
24 ~~(d) and (e); or~~

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

27 ~~(h) Upon licensure renewal, each applicant must submit~~
28 ~~to the agency, under penalty of perjury, an affidavit of~~
29 ~~compliance with the background screening provisions of this~~
30 ~~section.~~

31

1 (3)(6) As specified in part II of chapter 408, the
2 home medical equipment provider must also obtain and maintain
3 professional and commercial liability insurance. Proof of
4 liability insurance, as defined in s. 624.605, must be
5 submitted with the application. The agency shall set the
6 required amounts of liability insurance by rule, but the
7 required amount must not be less than \$250,000 per claim. In
8 the case of contracted services, it is required that the
9 contractor have liability insurance not less than \$250,000 per
10 claim.

11 ~~(7) A provisional license shall be issued to an~~
12 ~~approved applicant for initial licensure for a period of 90~~
13 ~~days, during which time a survey must be conducted~~
14 ~~demonstrating substantial compliance with this section. A~~
15 ~~provisional license shall also be issued pending the results~~
16 ~~of an applicant's Federal Bureau of Investigation report of~~
17 ~~background screening confirming that all standards have been~~
18 ~~met. If substantial compliance is demonstrated, a standard~~
19 ~~license shall be issued to expire 2 years after the effective~~
20 ~~date of the provisional license.~~

21 ~~(8) Ninety days before the expiration date, an~~
22 ~~application for license renewal must be submitted to the~~
23 ~~agency under oath on forms furnished by the agency, and a~~
24 ~~license shall be renewed if the applicant has met the~~
25 ~~requirements established under this part and applicable rules.~~
26 ~~The home medical equipment provider must file with the~~
27 ~~application satisfactory proof that it is in compliance with~~
28 ~~this part and applicable rules. The home medical equipment~~
29 ~~provider must submit satisfactory proof of its financial~~
30 ~~ability to comply with the requirements of this part.~~

31

1 ~~(9)~~ When a change of ownership of a home medical
2 equipment provider occurs, the prospective owner must submit
3 an initial application for a license at least 15 days before
4 the effective date of the change of ownership. An application
5 for change of ownership of a license is required when
6 ownership, a majority of the ownership, or controlling
7 interest of a licensed home medical equipment provider is
8 transferred or assigned and when a licensee agrees to
9 undertake or provide services to the extent that legal
10 liability for operation of the home medical equipment provider
11 rests with the licensee. A provisional license shall be issued
12 to the new owner for a period of 90 days, during which time
13 all required documentation must be submitted and a survey must
14 be conducted demonstrating substantial compliance with this
15 section. If substantial compliance is demonstrated, a standard
16 license shall be issued to expire 2 years after the issuance
17 of the provisional license.

18 ~~(4)~~~~(10)~~ When a change of the general manager of a home
19 medical equipment provider occurs, the licensee must notify
20 the agency of the change within 45 days thereof and must
21 provide evidence of compliance with the background screening
22 requirements in subsection (5); except that a general manager
23 who has met the standards for the Department of Law
24 Enforcement background check, but for whom background
25 screening results from the Federal Bureau of Investigation
26 have not yet been received, may be employed pending receipt of
27 the Federal Bureau of Investigation background screening
28 report. An individual may not continue to serve as general
29 manager if the Federal Bureau of Investigation background
30 screening report indicates any violation of background
31 screening standards.

1 ~~(5)(11)~~ In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part, part II of chapter 408, and
4 applicable rules. The amount of the fee shall be established
5 by rule and may not exceed \$300 per biennium. All licensure
6 fees required of a home medical equipment provider are
7 nonrefundable. The agency shall set the fees in an amount that
8 is sufficient to cover its costs in carrying out its
9 responsibilities under this part. However, state, county, or
10 municipal governments applying for licenses under this part
11 are exempt from the payment of license fees. ~~All fees~~
12 ~~collected under this part must be deposited in the Health Care~~
13 ~~Trust Fund for the administration of this part.~~

14 ~~(6)(12)~~ An applicant for initial licensure, renewal,
15 or change of ownership shall also pay a license processing fee
16 not to exceed \$300, to be paid by all applicants, and an
17 inspection fee not to exceed \$400, which shall ~~to~~ be paid by
18 all applicants except those not subject to licensure
19 inspection by the agency as described in s. 400.933(2).

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

23 ~~(14)~~ ~~When a duplicate license is issued, a fee must be~~
24 ~~assessed, not to exceed the actual cost of duplicating and~~
25 ~~mailing.~~

26 ~~(15)~~ ~~When applications are mailed out upon request, a~~
27 ~~fee must be assessed, not to exceed the cost of the printing,~~
28 ~~preparation, and mailing.~~

29 ~~(16)~~ ~~The license must be displayed in a conspicuous~~
30 ~~place in the administrative office of the home medical~~
31 ~~equipment provider and is valid only while in the possession~~

1 ~~of the person or entity to which it is issued. The license may~~
2 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
3 ~~or involuntarily, and is valid only for the home medical~~
4 ~~equipment provider and location for which originally issued.~~

5 ~~(17) A home medical equipment provider against whom a~~
6 ~~proceeding for revocation or suspension, or for denial of a~~
7 ~~renewal application, is pending at the time of license renewal~~
8 ~~may be issued a provisional license effective until final~~
9 ~~disposition by the agency of such proceedings. If judicial~~
10 ~~relief is sought from the final disposition, the court that~~
11 ~~has jurisdiction may issue a temporary permit for the duration~~
12 ~~of the judicial proceeding.~~

13 Section 153. Section 400.932, Florida Statutes, is
14 amended to read:

15 400.932 Administrative penalties; injunctions;
16 emergency orders; moratoriums.--

17 (1) The agency may deny, revoke, and ~~or~~ suspend a
18 license, and ~~or~~ impose an administrative fine not to exceed
19 \$5,000 per violation, per day, or initiate injunctive
20 proceedings under s. 400.956.

21 (2) Any of the following actions by an employee of a
22 home medical equipment provider ~~or any of its employees~~ is
23 grounds for administrative action or penalties by the agency:

24 (a) Violation of this part or of applicable rules.

25 (b) An intentional, reckless, or negligent act that
26 materially affects the health or safety of a patient.

27 (3) The agency may deny and ~~or~~ revoke the license of
28 any applicant that:

29 ~~(a) Made a false representation or omission of any~~
30 ~~material fact in making the application, including the~~
31 ~~submission of an application that conceals the controlling or~~

1 ~~ownership interest or any officer, director, agent, managing~~
2 ~~employee, affiliated person, partner, or shareholder who may~~
3 ~~not be eligible to participate;~~

4 (a)(b) Has been previously found by any professional
5 licensing, certifying, or standards board or agency to have
6 violated the standards or conditions relating to licensure or
7 certification or the quality of services provided.

8 "Professional licensing, certifying, or standards board or
9 agency" shall include, but is not limited to, practitioners,
10 health care facilities, programs, or services, or residential
11 care, treatment programs, or other human services; or

12 (b)(c) Has been or is currently excluded, suspended,
13 or terminated from, or has involuntarily withdrawn from,
14 ~~participation in Florida's Medicaid program or any other~~
15 ~~state's Medicaid program, or participation in the Medicare~~
16 ~~program or any other governmental or private health care or~~
17 health insurance program.

18 ~~(4) The agency may issue an emergency order~~
19 ~~immediately suspending or revoking a license when it~~
20 ~~determines that any condition within the responsibility of the~~
21 ~~home medical equipment provider presents a clear and present~~
22 ~~danger to public health and safety.~~

23 ~~(5) The agency may impose an immediate moratorium on~~
24 ~~any licensed home medical equipment provider when the agency~~
25 ~~determines that any condition within the responsibility of the~~
26 ~~home medical equipment provider presents a threat to public~~
27 ~~health or safety.~~

28 Section 154. Section 400.933, Florida Statutes, is
29 amended to read:

30 400.933 Licensure inspections and investigations.--
31

1 ~~(1) The agency shall make or cause to be made such~~
2 ~~inspections and investigations as it considers necessary,~~
3 ~~including:~~

4 ~~(a) Licensure inspections.~~

5 ~~(b) Inspections directed by the federal Health Care~~
6 ~~Financing Administration.~~

7 ~~(c) Licensure complaint investigations, including full~~
8 ~~licensure investigations with a review of all licensure~~
9 ~~standards as outlined in the administrative rules. Complaints~~
10 ~~received by the agency from individuals, organizations, or~~
11 ~~other sources are subject to review and investigation by the~~
12 ~~agency.~~

13 ~~(2)~~ The agency shall accept, in lieu of its own
14 periodic inspections for licensure, submission of the
15 following:

16 ~~(1)(a)~~ The survey or inspection of an accrediting
17 organization, provided the accreditation of the licensed home
18 medical equipment provider is not provisional and provided the
19 licensed home medical equipment provider authorizes release
20 of, and the agency receives the report of, the accrediting
21 organization; or

22 ~~(2)(b)~~ A copy of a valid medical oxygen retail
23 establishment permit issued by the Department of Health,
24 pursuant to chapter 499.

25 Section 155. Section 400.935, Florida Statutes, is
26 amended to read:

27 400.935 Rules establishing minimum standards.--The
28 agency shall adopt, publish, and enforce rules to administer
29 ~~implement~~ this part and part II of chapter 408, which must
30 provide reasonable and fair minimum standards relating to:
31

1 (1) The qualifications and minimum training
2 requirements of all home medical equipment provider personnel.

3 ~~(2) License application and renewal.~~

4 ~~(3) License and inspection fees.~~

5 ~~(2)(4)~~ Financial ability to operate.

6 ~~(3)(5)~~ The administration of the home medical
7 equipment provider.

8 ~~(4)(6)~~ Procedures for maintaining patient records.

9 ~~(5)(7)~~ Ensuring that the home medical equipment and
10 services provided by a home medical equipment provider are in
11 accordance with the plan of treatment established for each
12 patient, when provided as a part of a plan of treatment.

13 ~~(6)(8)~~ Contractual arrangements for the provision of
14 home medical equipment and services by providers not employed
15 by the home medical equipment provider providing for the
16 consumer's needs.

17 ~~(7)(9)~~ Physical location and zoning requirements.

18 ~~(8)(10)~~ Home medical equipment requiring home medical
19 equipment services.

20 Section 156. Section 400.95, subsection (2) of section
21 400.953, subsection (4) of section 400.955, and section
22 400.956, Florida Statutes, are repealed.

23 Section 157. Section 400.960, Florida Statutes, is
24 amended to read:

25 400.960 Definitions.--As used in this part, the term:

26 (1) "Active treatment" means the provision of services
27 by an interdisciplinary team which are necessary to maximize a
28 client's individual independence or prevent regression or loss
29 of functional status.

30 (2) "Agency" means the Agency for Health Care
31 Administration.

1 (3) "Autism" means a pervasive, neurologically based
2 developmental disability of extended duration which causes
3 severe learning, communication, and behavior disorders with
4 age of onset during infancy or childhood. Individuals with
5 autism exhibit impairment in reciprocal social interaction,
6 impairment in verbal and nonverbal communication and
7 imaginative ability, and a markedly restricted repertoire of
8 activities and interests.

9 (4) "Cerebral palsy" means a group of disabling
10 symptoms of extended duration which results from damage to the
11 developing brain occurring before, during, or after birth and
12 resulting in the loss or impairment of control over voluntary
13 muscles. The term does not include those symptoms or
14 impairments resulting solely from a stroke.

15 ~~(5) "Client" means any person determined by the~~
16 ~~department to be eligible for developmental services.~~

17 ~~(6) "Client advocate" means a friend or relative of~~
18 ~~the client, or of the client's immediate family, who advocates~~
19 ~~for the best interests of the client in any proceedings under~~
20 ~~this part in which the client or his or her family has the~~
21 ~~right or duty to participate.~~

22 (5)(7) "Department" means the Department of Children
23 and Family Services.

24 (6)(8) "Developmental disability" means a disorder or
25 syndrome that is attributable to retardation, cerebral palsy,
26 autism, spina bifida, or Prader-Willi syndrome and that
27 constitutes a substantial handicap that can reasonably be
28 expected to continue indefinitely.

29 (7)(9) "Direct service provider" means a person 18
30 years of age or older who has direct contact with individuals
31

1 with developmental disabilities and who is unrelated to the
2 individuals with developmental disabilities.

3 ~~(8)(10)~~ "Epilepsy" means a chronic brain disorder of
4 various causes which is characterized by recurrent seizures
5 due to excessive discharge of cerebral neurons. When found
6 concurrently with retardation, autism, or cerebral palsy,
7 epilepsy is considered a secondary disability for which the
8 client is eligible to receive services to ameliorate this
9 condition according to the provisions of this part.

10 ~~(9)(11)~~ "Guardian advocate" means a person appointed
11 by the circuit court to represent a person with developmental
12 disabilities in any proceedings brought pursuant to s. 393.12,
13 and is distinct from a guardian advocate for mentally ill
14 persons under chapter 394.

15 ~~(10)(12)~~ "Intermediate care facility for the
16 developmentally disabled" means a residential facility
17 licensed and certified in accordance with state law, and
18 certified by the Federal Government, pursuant to the Social
19 Security Act, as a provider of Medicaid services to persons
20 who are developmentally disabled.

21 ~~(11)(13)~~ "Prader-Willi syndrome" means an inherited
22 condition typified by neonatal hypotonia with failure to
23 thrive, hyperphagia, or an excessive drive to eat which leads
24 to obesity, usually at 18 to 36 months of age, mild to
25 moderate retardation, hypogonadism, short stature, mild facial
26 dysmorphism, and a characteristic neurobehavior.

27 (12) "Resident" means any person receiving services in
28 an intermediate care facility.

29 (13) "Resident advocate" means a friend or relative of
30 the resident, or of the resident's immediate family, who
31 advocates for the best interests of the resident in any

1 proceedings under this part in which the resident or his or
2 her family has the right or duty to participate.

3 (14) "Retardation" means significantly subaverage
4 general intellectual functioning existing concurrently with
5 deficits in adaptive behavior and manifested during the period
6 from conception to age 18. "Significantly subaverage general
7 intellectual functioning," for the purpose of this definition,
8 means performance that is two or more standard deviations from
9 the mean score on a standardized intelligence test specified
10 in rules of the department. "Deficits in adaptive behavior,"
11 for the purpose of this definition, means deficits in the
12 effectiveness or degree with which an individual meets the
13 standards of personal independence and social responsibility
14 expected of his or her age, cultural group, and community.

15 (15) "Spina bifida" means a medical diagnosis of spina
16 bifida cystica or myelomeningocele.

17 Section 158. Section 400.962, Florida Statutes, is
18 amended to read:

19 400.962 License required; license application.--

20 (1) The requirements of part II of chapter 408 apply
21 to the provision of services that necessitate licensure
22 pursuant to this part and part II of chapter 408 and to
23 entities licensed by or applying for such licensure from the
24 Agency for Health Care Administration pursuant to this part.
25 However, each applicant for licensure and licensee is exempt
26 from s. 408.810(7). It is unlawful to operate an intermediate
27 care facility for the developmentally disabled without a
28 license.

29 (2) Separate licenses are required for facilities
30 maintained on separate premises even if operated under the
31

1 same management. However, a separate license is not required
2 for separate buildings on the same grounds.

3 (3) In accordance with s. 408.805, an applicant or
4 licensee shall pay a fee for each license application
5 submitted under this part, part II of chapter 408, and
6 applicable rules. The amount of the fee shall be \$234 per bed
7 unless modified by rule. The basic license fee collected shall
8 be deposited in the Health Care Trust Fund, established for
9 carrying out the purposes of this chapter.

10 ~~(4) The license must be conspicuously displayed inside~~
11 ~~the facility.~~

12 ~~(5) A license is valid only in the hands of the~~
13 ~~individual, firm, partnership, association, or corporation to~~
14 ~~whom it is issued. A license is not valid for any premises~~
15 ~~other than those for which it was originally issued and may~~
16 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
17 ~~or involuntarily.~~

18 ~~(6) An application for a license shall be made to the~~
19 ~~agency on forms furnished by it and must be accompanied by the~~
20 ~~appropriate license fee.~~

21 ~~(7) The application must be under oath and must~~
22 ~~contain the following:~~

23 ~~(a) The name, address, and social security number of~~
24 ~~the applicant if an individual; if the applicant is a firm,~~
25 ~~partnership, or association, its name, address, and employer~~
26 ~~identification number (EIN), and the name and address of every~~
27 ~~member; if the applicant is a corporation, its name, address,~~
28 ~~and employer identification number (EIN), and the name and~~
29 ~~address of its director and officers and of each person having~~
30 ~~at least a 5 percent interest in the corporation; and the name~~
31 ~~by which the facility is to be known.~~

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

9 ~~(c) The location of the facility for which a license~~
10 ~~is sought and an indication that such location conforms to the~~
11 ~~local zoning ordinances.~~

12 ~~(d) The name of the persons under whose management or~~
13 ~~supervision the facility will be operated.~~

14 ~~(e) The total number of beds.~~

15 (4)(8) The applicant must demonstrate that sufficient
16 numbers of staff, qualified by training or experience, will be
17 employed to properly care for the type and number of residents
18 who will reside in the facility.

19 ~~(9) The applicant must submit evidence that~~
20 ~~establishes the good moral character of the applicant,~~
21 ~~manager, supervisor, and administrator. An applicant who is an~~
22 ~~individual or a member of a board of directors or officer of~~
23 ~~an applicant that is a firm, partnership, association, or~~
24 ~~corporation must not have been convicted, or found guilty,~~
25 ~~regardless of adjudication, of a crime in any jurisdiction~~
26 ~~which affects or may potentially affect residents in the~~
27 ~~facility.~~

28 ~~(10)(a) Upon receipt of a completed, signed, and dated~~
29 ~~application, the agency shall require background screening of~~
30 ~~the applicant, in accordance with the level 2 standards for~~
31 ~~screening set forth in chapter 435. As used in this~~

1 ~~subsection, the term "applicant" means the facility~~
2 ~~administrator, or similarly titled individual who is~~
3 ~~responsible for the day to day operation of the licensed~~
4 ~~facility, and the facility financial officer, or similarly~~
5 ~~titled individual who is responsible for the financial~~
6 ~~operation of the licensed facility.~~

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

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

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

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

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

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

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

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

13 ~~(11) The applicant must furnish satisfactory proof of~~
14 ~~financial ability to operate and conduct the facility in~~
15 ~~accordance with the requirements of this part and all rules~~
16 ~~adopted under this part, and the agency shall establish~~
17 ~~standards for this purpose.~~

18 Section 159. Sections 400.963 and 400.965, Florida
19 Statutes, are repealed.

20 Section 160. Section 400.967, Florida Statutes, is
21 amended to read:

22 400.967 Rules and classification of deficiencies.--

23 (1) It is the intent of the Legislature that rules
24 adopted and enforced under this part and part II of chapter
25 408 include criteria by which a reasonable and consistent
26 quality of resident care may be ensured, the results of such
27 resident care can be demonstrated, and safe and sanitary
28 facilities can be provided.

29 (2) Pursuant to the intention of the Legislature, the
30 agency, in consultation with the Agency for Persons with
31 Disabilities ~~Department of Children and Family Services and~~

1 ~~the Department of Elderly Affairs~~, shall adopt ~~and enforce~~
2 rules to administer this part, which shall include reasonable
3 and fair criteria governing:

4 (a) The location and construction of the facility;
5 including fire and life safety, plumbing, heating, cooling,
6 lighting, ventilation, and other housing conditions that will
7 ensure the health, safety, and comfort of residents. The
8 agency shall establish standards for facilities and equipment
9 to increase the extent to which new facilities and a new wing
10 or floor added to an existing facility after July 1, 2000, are
11 structurally capable of serving as shelters only for
12 residents, staff, and families of residents and staff, and
13 equipped to be self-supporting during and immediately
14 following disasters. The Agency for Health Care Administration
15 shall work with facilities licensed under this part and report
16 to the Governor and the Legislature by April 1, 2000, its
17 recommendations for cost-effective renovation standards to be
18 applied to existing facilities. In making such rules, the
19 agency shall be guided by criteria recommended by nationally
20 recognized, reputable professional groups and associations
21 having knowledge concerning such subject matters. The agency
22 shall update or revise such criteria as the need arises. All
23 facilities must comply with those lifesafety code requirements
24 and building code standards applicable at the time of approval
25 of their construction plans. The agency may require
26 alterations to a building if it determines that an existing
27 condition constitutes a distinct hazard to life, health, or
28 safety. The agency shall adopt fair and reasonable rules
29 setting forth conditions under which existing facilities
30 undergoing additions, alterations, conversions, renovations,
31

1 or repairs are required to comply with the most recent updated
2 or revised standards.

3 (b) The number and qualifications of all personnel,
4 including management, medical nursing, and other personnel,
5 having responsibility for any part of the care given to
6 residents.

7 (c) All sanitary conditions within the facility and
8 its surroundings, including water supply, sewage disposal,
9 food handling, and general hygiene, which will ensure the
10 health and comfort of residents.

11 (d) The equipment essential to the health and welfare
12 of the residents.

13 (e) A uniform accounting system.

14 (f) The care, treatment, and maintenance of residents
15 and measurement of the quality and adequacy thereof.

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

1 Children and Family Services, the Agency for Health Care
2 Administration, and the Department of Community Affairs. Also,
3 appropriate volunteer organizations must be given the
4 opportunity to review the plan. The local emergency management
5 agency shall complete its review within 60 days and either
6 approve the plan or advise the facility of necessary
7 revisions.

8 ~~(h) Each licensee shall post its license in a~~
9 ~~prominent place that is in clear and unobstructed public view~~
10 ~~at or near the place where residents are being admitted to the~~
11 ~~facility.~~

12 (3) In accordance with part II of chapter 408, the
13 agency shall adopt rules to provide that, when the criteria
14 established under this part and part II of chapter 408
15 ~~subsection (2)~~ are not met, such deficiencies shall be
16 classified according to the nature of the deficiency. The
17 agency shall indicate the classification on the face of the
18 notice of deficiencies as follows:

19 (a) Class I deficiencies are those which the agency
20 determines present and imminent danger to the residents or
21 guests of the facility or a substantial probability that death
22 or serious physical harm would result therefrom. The condition
23 or practice constituting a class I violation must be abated or
24 eliminated immediately, unless a fixed period of time, as
25 determined by the agency, is required for correction.

26 ~~Notwithstanding s. 400.121(2),~~ A class I deficiency is subject
27 to a civil penalty in an amount not less than \$5,000 and not
28 exceeding \$10,000 for each deficiency. A fine may be levied
29 notwithstanding the correction of the deficiency.

30 (b) Class II deficiencies are those which the agency
31 determines have a direct or immediate relationship to the

1 health, safety, or security of the facility residents, other
2 than class I deficiencies. A class II deficiency is subject to
3 a civil penalty in an amount not less than \$1,000 and not
4 exceeding \$5,000 for each deficiency. A citation for a class
5 II deficiency shall specify the time within which the
6 deficiency must be corrected. If a class II deficiency is
7 corrected within the time specified, no civil penalty shall be
8 imposed, unless it is a repeated offense.

9 (c) Class III deficiencies are those which the agency
10 determines to have an indirect or potential relationship to
11 the health, safety, or security of the facility residents,
12 other than class I or class II deficiencies. A class III
13 deficiency is subject to a civil penalty of not less than \$500
14 and not exceeding \$1,000 for each deficiency. A citation for a
15 class III deficiency shall specify the time within which the
16 deficiency must be corrected. If a class III deficiency is
17 corrected within the time specified, no civil penalty shall be
18 imposed, unless it is a repeated offense.

19 ~~(4) Civil penalties paid by any licensee under~~
20 ~~subsection (3) shall be deposited in the Health Care Trust~~
21 ~~Fund and expended as provided in s. 400.063.~~

22 (4)(5) The agency shall approve or disapprove the
23 plans and specifications within 60 days after receipt of the
24 final plans and specifications. The agency may be granted one
25 15-day extension for the review period, if the secretary of
26 the agency so approves. If the agency fails to act within the
27 specified time, it is deemed to have approved the plans and
28 specifications. When the agency disapproves plans and
29 specifications, it must set forth in writing the reasons for
30 disapproval. Conferences and consultations may be provided as
31 necessary.

1 ~~(5)(6)~~ The agency may charge an initial fee of \$2,000
2 for review of plans and construction on all projects, no part
3 of which is refundable. The agency may also collect a fee, not
4 to exceed 1 percent of the estimated construction cost or the
5 actual cost of review, whichever is less, for the portion of
6 the review which encompasses initial review through the
7 initial revised construction document review. The agency may
8 collect its actual costs on all subsequent portions of the
9 review and construction inspections. Initial fee payment must
10 accompany the initial submission of plans and specifications.
11 Any subsequent payment that is due is payable upon receipt of
12 the invoice from the agency. Notwithstanding any other
13 provision of law, all money received by the agency under this
14 section shall be deemed to be trust funds, to be held and
15 applied solely for the operations required under this section.

16 (6) Each licensee of an intermediate care facility for
17 the developmentally disabled shall comply with the provisions
18 of s. 393.13 regarding The Bill of Rights of Persons Who are
19 Developmentally Disabled.

20 Section 161. Section 400.968, Florida Statutes, is
21 amended to read:

22 400.968 Right of entry; protection of health, safety,
23 and welfare.--

24 ~~(1)~~ Any designated officer or employee of the agency,
25 of the state, or of the local fire marshal may enter
26 unannounced the premises of any facility licensed under this
27 part in order to determine the state of compliance with this
28 part and the rules or standards in force under this part. The
29 right of entry and inspection also extends to any premises
30 that the agency has reason to believe are being operated or
31 maintained as a facility without a license; but such an entry

1 or inspection may not be made without the permission of the
2 owner or person in charge of the facility unless a warrant
3 that authorizes the entry is first obtained from the circuit
4 court. The warrant requirement extends only to a facility that
5 the agency has reason to believe is being operated or
6 maintained as a facility without a license. An application for
7 a license or renewal thereof which is made under this section
8 constitutes permission for, and acquiescence in, any entry or
9 inspection of the premises for which the license is sought, in
10 order to facilitate verification of the information submitted
11 in connection with the application; to discover, investigate,
12 and determine the existence of abuse or neglect; or to elicit,
13 receive, respond to, and resolve complaints. A current valid
14 license constitutes unconditional permission for, and
15 acquiescence in, any entry or inspection of the premises by
16 authorized personnel. The agency retains the right of entry
17 and inspection of facilities that have had a license revoked
18 or suspended within the previous 24 months, to ensure that the
19 facility is not operating unlawfully. However, before the
20 facility is entered, a statement of probable cause must be
21 filed with the director of the agency, who must approve or
22 disapprove the action within 48 hours.

23 ~~(2) The agency may institute injunctive proceedings in~~
24 ~~a court of competent jurisdiction for temporary or permanent~~
25 ~~relief to:~~

26 ~~(a) Enforce this section or any minimum standard,~~
27 ~~rule, or order issued pursuant thereto if the agency's effort~~
28 ~~to correct a violation through administrative fines has failed~~
29 ~~or when the violation materially affects the health, safety,~~
30 ~~or welfare of residents; or~~

31

1 ~~(b) Terminate the operation of a facility if a~~
2 ~~violation of this section or of any standard or rule adopted~~
3 ~~pursuant thereto exists which materially affects the health,~~
4 ~~safety, or welfare of residents.~~

5
6 ~~The Legislature recognizes that, in some instances, action is~~
7 ~~necessary to protect residents of facilities from immediately~~
8 ~~life threatening situations. If it appears by competent~~
9 ~~evidence or a sworn, substantiated affidavit that a temporary~~
10 ~~injunction should issue, the court, pending the determination~~
11 ~~on final hearing, shall enjoin operation of the facility.~~

12 ~~(3) The agency may impose an immediate moratorium on~~
13 ~~admissions to a facility when the agency determines that any~~
14 ~~condition in the facility presents a threat to the health,~~
15 ~~safety, or welfare of the residents in the facility. If a~~
16 ~~facility's license is denied, revoked, or suspended, the~~
17 ~~facility may be subject to the immediate imposition of a~~
18 ~~moratorium on admissions to run concurrently with licensure~~
19 ~~denial, revocation, or suspension.~~

20 Section 162. Section 400.9685, Florida Statutes, is
21 amended to read:

22 400.9685 Administration of medication.--

23 (1) Notwithstanding the provisions of the Nurse
24 Practice Act, part I of chapter 464, unlicensed direct care
25 services staff who are providing services to residents ~~clients~~
26 in intermediate care facilities for the developmentally
27 disabled, licensed pursuant to this part, may administer
28 prescribed, prepackaged, premeasured medications under the
29 general supervision of a registered nurse as provided in this
30 section and applicable rules. Training required by this
31 section and applicable rules must be conducted by a registered

1 nurse licensed pursuant to chapter 464 or a physician licensed
2 pursuant to chapter 458 or chapter 459.

3 (2) Each facility that allows unlicensed direct care
4 service staff to administer medications pursuant to this
5 section must:

6 (a) Develop and implement policies and procedures that
7 include a plan to ensure the safe handling, storage, and
8 administration of prescription medication.

9 (b) Maintain written evidence of the expressed and
10 informed consent for each resident ~~client~~.

11 (c) Maintain a copy of the written prescription
12 including the name of the medication, the dosage, and
13 administration schedule.

14 (d) Maintain documentation regarding the prescription
15 including the name, dosage, and administration schedule,
16 reason for prescription, and the termination date.

17 (e) Maintain documentation of compliance with required
18 training.

19 (3) Agency rules shall specify the following as it
20 relates to the administration of medications by unlicensed
21 staff:

22 (a) Medications authorized and packaging required.

23 (b) Acceptable methods of administration.

24 (c) A definition of "general supervision."

25 (d) Minimum educational requirements of staff.

26 (e) Criteria of required training and competency that
27 must be demonstrated prior to the administration of
28 medications by unlicensed staff including inservice training.

29 (f) Requirements for safe handling, storage, and
30 administration of medications.

31

1 Section 163. Subsection (1) of section 400.969,
2 Florida Statutes, is amended to read:

3 400.969 Violation of part; penalties.--

4 (1) In accordance with part II of chapter 408 and
5 except as provided in s. 400.967(3), a violation of any
6 provision of this part, part II of chapter 408, or applicable
7 ~~rules adopted by the agency under this part~~ is punishable by
8 payment of an administrative or civil penalty not to exceed
9 \$5,000.

10 Section 164. Section 400.980, Florida Statutes, is
11 amended to read:

12 400.980 Health care services pools.--

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

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

16 (b) "Health care services pool" means any person,
17 firm, corporation, partnership, or association engaged for
18 hire in the business of providing temporary employment in
19 health care facilities, residential facilities, and agencies
20 for licensed, certified, or trained health care personnel
21 including, without limitation, nursing assistants, nurses'
22 aides, and orderlies. However, the term does not include
23 nursing registries, a facility licensed under chapter 400, a
24 health care services pool established within a health care
25 facility to provide services only within the confines of such
26 facility, or any individual contractor directly providing
27 temporary services to a health care facility without use or
28 benefit of a contracting agent.

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

1 and to entities registered by or applying for such
2 registration from the Agency for Health Care Administration
3 pursuant to this part. However, each applicant for licensure
4 and licensee is exempt from ss. 408.806(1)(e)2. and
5 408.810(6)-(10). Each person who operates a health care
6 services pool must register each separate business location
7 with the agency. The agency shall adopt rules and provide
8 forms required for such registration and shall impose a
9 registration fee in an amount sufficient to cover the cost of
10 administering this section. In addition, the registrant must
11 provide the agency with any change of information contained on
12 the original registration application within 14 days prior to
13 the change. ~~The agency may inspect the offices of any health~~
14 ~~care services pool at any reasonable time for the purpose of~~
15 ~~determining compliance with this section or the rules adopted~~
16 ~~under this section.~~

17 ~~(3) Each application for registration must include:~~

18 ~~(a) The name and address of any person who has an~~
19 ~~ownership interest in the business, and, in the case of a~~
20 ~~corporate owner, copies of the articles of incorporation,~~
21 ~~bylaws, and names and addresses of all officers and directors~~
22 ~~of the corporation.~~

23 ~~(b) Any other information required by the agency.~~

24 ~~(4) Each applicant for registration must comply with~~
25 ~~the following requirements:~~

26 ~~(3)(a)~~ Upon receipt of a completed, signed, and dated
27 application, the agency shall require background screening, in
28 accordance with the level 1 standards for screening set forth
29 in chapter 435, of every individual who will have contact with
30 patients. ~~The agency shall require background screening of the~~
31 ~~managing employee or other similarly titled individual who is~~

1 ~~responsible for the operation of the entity, and of the~~
2 ~~financial officer or other similarly titled individual who is~~
3 ~~responsible for the financial operation of the entity,~~
4 ~~including billings for services in accordance with the level 2~~
5 ~~standards for background screening as set forth in chapter~~
6 ~~435.~~

7 ~~(b) The agency may require background screening of any~~
8 ~~other individual who is affiliated with the applicant if the~~
9 ~~agency has a reasonable basis for believing that he or she has~~
10 ~~been convicted of a crime or has committed any other offense~~
11 ~~prohibited under the level 2 standards for screening set forth~~
12 ~~in chapter 435.~~

13 ~~(c) Proof of compliance with the level 2 background~~
14 ~~screening requirements of chapter 435 which has been submitted~~
15 ~~within the previous 5 years in compliance with any other~~
16 ~~health care or assisted living licensure requirements of this~~
17 ~~state is acceptable in fulfillment of paragraph (a).~~

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

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

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

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

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

8 ~~(h) Failure to provide all required documentation~~
9 ~~within 30 days after a written request from the agency will~~
10 ~~result in denial of the application for registration.~~

11 ~~(i) The agency must take final action on an~~
12 ~~application for registration within 60 days after receipt of~~
13 ~~all required documentation.~~

14 ~~(j) The agency may deny, revoke, or suspend the~~
15 ~~registration of any applicant or registrant who:~~

16 1. ~~Has falsely represented a material fact in the~~
17 ~~application required by paragraph (c) or paragraph (f), or has~~
18 ~~omitted any material fact from the application required by~~
19 ~~paragraph (c) or paragraph (f); or~~

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

23 3. ~~Fails to comply with this section or applicable~~
24 ~~rules.~~

25 4. ~~Commits an intentional, reckless, or negligent act~~
26 ~~that materially affects the health or safety of a person~~
27 ~~receiving services.~~

28 ~~(4)(5)~~ It is a misdemeanor of the first degree,
29 punishable under s. 775.082 or s. 775.083, for any person
30 willfully, knowingly, or intentionally to:
31

1 (a) Fail, by false statement, misrepresentation,
2 impersonation, or other fraudulent means, to disclose in any
3 application for voluntary or paid employment a material fact
4 used in making a determination as to an applicant's
5 qualifications to be a contractor under this section;

6 (b) Operate or attempt to operate an entity registered
7 under this part with persons who do not meet the minimum
8 standards of chapter 435 as contained in this section; or

9 (c) Use information from the criminal records obtained
10 under this section for any purpose other than screening an
11 applicant for temporary employment as specified in this
12 section, or release such information to any other person for
13 any purpose other than screening for employment under this
14 section.

15 (5)(6) It is a felony of the third degree, punishable
16 under s. 775.082, s. 775.083, or s. 775.084, for any person
17 willfully, knowingly, or intentionally to use information from
18 the juvenile records of a person obtained under this section
19 for any purpose other than screening for employment under this
20 section.

21 ~~(7) It is unlawful for a person to offer or advertise~~
22 ~~services, as defined by rule, to the public without obtaining~~
23 ~~a certificate of registration from the Agency for Health Care~~
24 ~~Administration. It is unlawful for any holder of a certificate~~
25 ~~of registration to advertise or hold out to the public that he~~
26 ~~or she holds a certificate of registration for other than that~~
27 ~~for which he or she actually holds a certificate of~~
28 ~~registration. Any person who violates this subsection is~~
29 ~~subject to injunctive proceedings under s. 400.515.~~

30 ~~(8) Each registration shall be for a period of 2~~
31 ~~years. The application for renewal must be received by the~~

1 ~~agency at least 30 days before the expiration date of the~~
2 ~~registration. An application for a new registration is~~
3 ~~required within 30 days prior to the sale of a controlling~~
4 ~~interest in a health care services pool.~~

5 (6)~~(9)~~ A health care services pool may not require an
6 employee to recruit new employees from persons employed at a
7 health care facility to which the health care services pool
8 employee is assigned. Nor shall a health care facility to
9 which employees of a health care services pool are assigned
10 recruit new employees from the health care services pool.

11 (7)~~(10)~~ A health care services pool shall document
12 that each temporary employee provided to a health care
13 facility has met the licensing, certification, training, or
14 continuing education requirements, as established by the
15 appropriate regulatory agency, for the position in which he or
16 she will be working.

17 (8)~~(11)~~ When referring persons for temporary
18 employment in health care facilities, a health care services
19 pool shall comply with all pertinent state and federal laws,
20 rules, and regulations relating to health, background
21 screening, and other qualifications required of persons
22 working in a facility of that type.

23 (9)~~(12)~~(a) As a condition of registration and prior to
24 the issuance or renewal of a certificate of registration, a
25 health care services pool applicant must prove financial
26 responsibility to pay claims, and costs ancillary thereto,
27 arising out of the rendering of services or failure to render
28 services by the pool or by its employees in the course of
29 their employment with the pool. The agency shall promulgate
30 rules establishing minimum financial responsibility coverage
31

1 amounts which shall be adequate to pay potential claims and
2 costs ancillary thereto.

3 (b) Each health care services pool shall give written
4 notification to the agency within 20 days after any change in
5 the method of assuring financial responsibility or upon
6 cancellation or nonrenewal of professional liability
7 insurance. Unless the pool demonstrates that it is otherwise
8 in compliance with the requirements of this section, the
9 agency shall suspend the registration of the pool pursuant to
10 ss. 120.569 and 120.57. Any suspension under this section
11 shall remain in effect until the pool demonstrates compliance
12 with the requirements of this section.

13 (c) Proof of financial responsibility must be
14 demonstrated to the satisfaction of the agency, through one of
15 the following methods:

16 1. Establishing and maintaining an escrow account
17 consisting of cash or assets eligible for deposit in
18 accordance with s. 625.52;

19 2. Obtaining and maintaining an unexpired irrevocable
20 letter of credit established pursuant to chapter 675. Such
21 letters of credit shall be nontransferable and nonassignable
22 and shall be issued by any bank or savings association
23 organized and existing under the laws of this state or any
24 bank or savings association organized under the laws of the
25 United States that has its principal place of business in this
26 state or has a branch office which is authorized under the
27 laws of this state or of the United States to receive deposits
28 in this state; or

29 3. Obtaining and maintaining professional liability
30 coverage from one of the following:

31 a. An authorized insurer as defined under s. 624.09;

1 b. An eligible surplus lines insurer as defined under
2 s. 626.918(2);

3 c. A risk retention group or purchasing group as
4 defined under s. 627.942; or

5 d. A plan of self-insurance as provided in s. 627.357.

6 (d) If financial responsibility requirements are met
7 by maintaining an escrow account or letter of credit, as
8 provided in this section, upon the entry of an adverse final
9 judgment arising from a medical malpractice arbitration award
10 from a claim of medical malpractice either in contract or
11 tort, or from noncompliance with the terms of a settlement
12 agreement arising from a claim of medical malpractice either
13 in contract or tort, the financial institution holding the
14 escrow account or the letter of credit shall pay directly to
15 the claimant the entire amount of the judgment together with
16 all accrued interest or the amount maintained in the escrow
17 account or letter of credit as required by this section,
18 whichever is less, within 60 days after the date such judgment
19 became final and subject to execution, unless otherwise
20 mutually agreed to in writing by the parties. If timely
21 payment is not made, the agency shall suspend the registration
22 of the pool pursuant to procedures set forth by the agency
23 through rule. Nothing in this paragraph shall abrogate a
24 judgment debtor's obligation to satisfy the entire amount of
25 any judgment.

26 (e) Each health care services pool carrying
27 claims-made coverage must demonstrate proof of extended
28 reporting coverage through either tail or nose coverage, in
29 the event the policy is canceled, replaced, or not renewed.
30 Such extended coverage shall provide coverage for incidents
31

1 that occurred during the claims-made policy period but were
2 reported after the policy period.

3 (f) The financial responsibility requirements of this
4 section shall apply to claims for incidents that occur on or
5 after January 1, 1991, or the initial date of registration in
6 this state, whichever is later.

7 (g) Meeting the financial responsibility requirements
8 of this section must be established at the time of issuance or
9 renewal of a certificate of registration.

10 ~~(10)(13)~~ The agency shall adopt rules to administer
11 ~~implement~~ this section and part II of chapter 408, including
12 rules providing for the establishment of:

13 (a) Minimum standards for the operation and
14 administration of health care personnel pools, including
15 procedures for recordkeeping and personnel.

16 (b) In accordance with part II of chapter 408, fines
17 for the violation of this part, part II of chapter 408, or
18 applicable rules ~~section~~ in an amount not to exceed \$2,500 ~~and~~
19 ~~suspension or revocation of registration.~~

20 ~~(c) Disciplinary sanctions for failure to comply with~~
21 ~~this section or the rules adopted under this section.~~

22 Section 165. Section 400.991, Florida Statutes, is
23 amended to read:

24 400.991 License requirements; background screenings;
25 prohibitions.--

26 (1)(a) The requirements of part II of chapter 408
27 apply to the provision of services that necessitate licensure
28 pursuant to this part and part II of chapter 408 and to
29 entities licensed by or applying for such licensure from the
30 Agency for Health Care Administration pursuant to this part.
31 However, each applicant for licensure and licensee is exempt

1 from the provisions of s. 408.810(6), (7), and (10). ~~Each~~
2 ~~clinic, as defined in s. 400.9905, must be licensed and shall~~
3 ~~at all times maintain a valid license with the agency.~~ Each
4 clinic location shall be licensed separately regardless of
5 whether the clinic is operated under the same business name or
6 management as another clinic.

7 (b) Each mobile clinic must obtain a separate health
8 care clinic license and must provide to the agency, at least
9 quarterly, its projected street location to enable the agency
10 to locate and inspect such clinic. A portable equipment
11 provider must obtain a health care clinic license for a single
12 administrative office and is not required to submit quarterly
13 projected street locations.

14 (2) The initial clinic license application shall be
15 filed with the agency by all clinics, as defined in s.
16 400.9905, on or before July 1, 2004. ~~A clinic license must be~~
17 ~~renewed biennially.~~

18 (3) Applicants that submit an application on or before
19 July 1, 2004, which meets all requirements for initial
20 licensure as specified in this section shall receive a
21 temporary license until the completion of an initial
22 inspection verifying that the applicant meets all requirements
23 in rules authorized in s. 400.9925. However, a clinic engaged
24 in magnetic resonance imaging services may not receive a
25 temporary license unless it presents evidence satisfactory to
26 the agency that such clinic is making a good faith effort and
27 substantial progress in seeking accreditation required under
28 s. 400.9935.

29 ~~(4) Application for an initial clinic license or for~~
30 ~~renewal of an existing license shall be notarized on forms~~
31 ~~furnished by the agency and must be accompanied by the~~

1 ~~appropriate license fee as provided in s. 400.9925. The agency~~
2 ~~shall take final action on an initial license application~~
3 ~~within 60 days after receipt of all required documentation.~~

4 ~~(4)(5)~~ The application shall contain information that
5 includes, but need not be limited to, information pertaining
6 to the name, residence and business address, phone number,
7 social security number, and license number of the medical or
8 clinic director, of the licensed medical providers employed or
9 under contract with the clinic, ~~and of each person who,~~
10 ~~directly or indirectly, owns or controls 5 percent or more of~~
11 ~~an interest in the clinic, or general partners in limited~~
12 ~~liability partnerships.~~

13 ~~(5)(6)~~ The applicant must file with the application
14 satisfactory proof that the clinic is in compliance with this
15 part and applicable rules, including:

16 (a) A listing of services to be provided either
17 directly by the applicant or through contractual arrangements
18 with existing providers; and

19 (b) The number and discipline of each professional
20 staff member to be employed; ~~and~~

21 ~~(c) Proof of financial ability to operate. An~~
22 ~~applicant must demonstrate financial ability to operate a~~
23 ~~clinic by submitting a balance sheet and an income and expense~~
24 ~~statement for the first year of operation which provide~~
25 ~~evidence of the applicant's having sufficient assets, credit,~~
26 ~~and projected revenues to cover liabilities and expenses. The~~
27 ~~applicant shall have demonstrated financial ability to operate~~
28 ~~if the applicant's assets, credit, and projected revenues meet~~
29 ~~or exceed projected liabilities and expenses. All documents~~
30 ~~required under this subsection must be prepared in accordance~~
31 ~~with generally accepted accounting principles, may be in a~~

1 ~~compilation form, and the financial statement must be signed~~
2 ~~by a certified public accountant.~~

3
4 As an alternative to submitting proof of financial ability to
5 operate as required in s. 408.810(8) ~~a balance sheet and an~~
6 ~~income and expense statement for the first year of operation,~~
7 the applicant may file a surety bond of at least \$500,000
8 which guarantees that the clinic will act in full conformity
9 with all legal requirements for operating a clinic, payable to
10 the agency. The agency may adopt rules to specify related
11 requirements for such surety bond.

12 ~~(6)(7)~~ The requirements for background screening in s.
13 408.809 apply to licensed medical providers at the clinic.

14 ~~Each applicant for licensure shall comply with the following~~
15 ~~requirements:~~

16 ~~(a) As used in this subsection, the term "applicant"~~
17 ~~means individuals owning or controlling, directly or~~
18 ~~indirectly, 5 percent or more of an interest in a clinic; the~~
19 ~~medical or clinic director, or a similarly titled person who~~
20 ~~is responsible for the day to day operation of the licensed~~
21 ~~clinic; the financial officer or similarly titled individual~~
22 ~~who is responsible for the financial operation of the clinic;~~
23 ~~and licensed health care practitioners at the clinic.~~

24 ~~(b) Upon receipt of a completed, signed, and dated~~
25 ~~application, the agency shall require background screening of~~
26 ~~the applicant, in accordance with the level 2 standards for~~
27 ~~screening set forth in chapter 435. Proof of compliance with~~
28 ~~the level 2 background screening requirements of chapter 435~~
29 ~~which has been submitted within the previous 5 years in~~
30 ~~compliance with any other health care licensure requirements~~
31 ~~of this state is acceptable in fulfillment of this paragraph.~~

1 ~~Applicants who own less than 10 percent of a health care~~
2 ~~clinic are not required to submit fingerprints under this~~
3 ~~section.~~

4 ~~(c) Each applicant must submit to the agency, with the~~
5 ~~application, a description and explanation of any exclusions,~~
6 ~~permanent suspensions, or terminations of an applicant from~~
7 ~~the Medicare or Medicaid programs. Proof of compliance with~~
8 ~~the requirements for disclosure of ownership and control~~
9 ~~interest under the Medicaid or Medicare programs may be~~
10 ~~accepted in lieu of this submission. The description and~~
11 ~~explanation may indicate whether such exclusions, suspensions,~~
12 ~~or terminations were voluntary or not voluntary on the part of~~
13 ~~the applicant.~~

14 ~~(d) A license may not be granted to a clinic if the~~
15 ~~applicant has been found guilty of, regardless of~~
16 ~~adjudication, or has entered a plea of nolo contendere or~~
17 ~~guilty to, any offense prohibited under the level 2 standards~~
18 ~~for screening set forth in chapter 435, or a violation of~~
19 ~~insurance fraud under s. 817.234, within the past 5 years. If~~
20 ~~the applicant has been convicted of an offense prohibited~~
21 ~~under the level 2 standards or insurance fraud in any~~
22 ~~jurisdiction, the applicant must show that his or her civil~~
23 ~~rights have been restored prior to submitting an application.~~

24 ~~(e) The agency may deny or revoke licensure if the~~
25 ~~applicant has falsely represented any material fact or omitted~~
26 ~~any material fact from the application required by this part.~~

27 ~~(8) Requested information omitted from an application~~
28 ~~for licensure, license renewal, or transfer of ownership must~~
29 ~~be filed with the agency within 21 days after receipt of the~~
30 ~~agency's request for omitted information, or the application~~
31

1 ~~shall be deemed incomplete and shall be withdrawn from further~~
2 ~~consideration.~~

3 ~~(9) The failure to file a timely renewal application~~
4 ~~shall result in a late fee charged to the facility in an~~
5 ~~amount equal to 50 percent of the current license fee.~~

6 Section 166. Section 400.9915, Florida Statutes, is
7 amended to read:

8 400.9915 Clinic inspections; emergency suspension;
9 costs.--

10 ~~(1) Any authorized officer or employee of the agency~~
11 ~~shall make inspections of the clinic as part of the initial~~
12 ~~license application or renewal application. The application~~
13 ~~for a clinic license issued under this part or for a renewal~~
14 ~~license constitutes permission for an appropriate agency~~
15 ~~inspection to verify the information submitted on or in~~
16 ~~connection with the application or renewal.~~

17 ~~(2) An authorized officer or employee of the agency~~
18 ~~may make unannounced inspections of clinics licensed pursuant~~
19 ~~to this part as are necessary to determine that the clinic is~~
20 ~~in compliance with this part and with applicable rules. A~~
21 ~~licensed clinic shall allow full and complete access to the~~
22 ~~premises and to billing records or information to any~~
23 ~~representative of the agency who makes an inspection to~~
24 ~~determine compliance with this part and with applicable rules.~~

25 ~~(1)(3) Failure by a clinic licensed under this part to~~
26 ~~allow full and complete access to the premises and to billing~~
27 ~~records or information to any representative of the agency who~~
28 ~~makes a request to inspect the clinic to determine compliance~~
29 ~~with this part or Failure by a clinic to employ a qualified~~
30 ~~medical director or clinic director constitutes a ground for~~
31

1 emergency suspension of the license by the agency pursuant to
2 s. 120.60(6) and part II of chapter 408.

3 ~~(2)(4)~~ In addition to any administrative fines
4 imposed, the agency may assess a fee equal to the cost of
5 conducting a complaint investigation.

6 Section 167. Section 400.992, Florida Statutes, is
7 repealed.

8 Section 168. Section 400.9925, Florida Statutes, is
9 amended to read:

10 400.9925 Rulemaking authority; license fees.--

11 (1) The agency shall adopt rules necessary to
12 administer the clinic administration, regulation, and
13 licensure program, including rules pursuant to this part and
14 part II of chapter 408, establishing the specific licensure
15 requirements, procedures, forms, and fees. It shall adopt
16 rules establishing a procedure for the biennial renewal of
17 licenses. The agency may issue initial licenses for less than
18 the full 2-year period by charging a prorated licensure fee
19 and specifying a different renewal date than would otherwise
20 be required for biennial licensure. The rules shall specify
21 the expiration dates of licenses, the process of tracking
22 compliance with financial responsibility requirements, and any
23 other conditions of renewal required by law or rule.

24 (2) The agency shall adopt rules specifying
25 limitations on the number of licensed clinics and licensees
26 for which a medical director or a clinic director may assume
27 responsibility for purposes of this part. In determining the
28 quality of supervision a medical director or a clinic director
29 can provide, the agency shall consider the number of clinic
30 employees, the clinic location, and the health care services
31 provided by the clinic.

1 (3) In accordance with s. 408.805, an applicant or
2 licensee shall pay a fee for each license application
3 submitted under this part, part II of chapter 408, and
4 applicable rules. The amount of the fee shall be established
5 by rule and may not exceed \$2,000 per biennium. License
6 ~~application and renewal fees must be reasonably calculated by~~
7 ~~the agency to cover its costs in carrying out its~~
8 ~~responsibilities under this part, including the cost of~~
9 ~~licensure, inspection, and regulation of clinics, and must be~~
10 ~~of such amount that the total fees collected do not exceed the~~
11 ~~cost of administering and enforcing compliance with this part.~~
12 ~~Clinic licensure fees are nonrefundable and may not exceed~~
13 ~~\$2,000. The agency shall adjust the license fee annually by~~
14 ~~not more than the change in the Consumer Price Index based on~~
15 ~~the 12 months immediately preceding the increase. All fees~~
16 ~~collected under this part must be deposited in the Health Care~~
17 ~~Trust Fund for the administration of this part.~~

18 Section 169. Section 400.993, Florida Statutes, is
19 amended to read:

20 400.993 Unlicensed clinics; ~~penalties; fines;~~
21 ~~verification of licensure status.--~~

22 ~~(1) It is unlawful to own, operate, or maintain a~~
23 ~~clinic without obtaining a license under this part.~~

24 ~~(2) Any person who owns, operates, or maintains an~~
25 ~~unlicensed clinic commits a felony of the third degree,~~
26 ~~punishable as provided in s. 775.082, s. 775.083, or s.~~
27 ~~775.084. Each day of continued operation is a separate~~
28 ~~offense.~~

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

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

3 ~~(4) Any person who owns, operates, or maintains an~~
4 ~~unlicensed clinic due to a change in this part or a~~
5 ~~modification in agency rules within 6 months after the~~
6 ~~effective date of such change or modification and who, within~~
7 ~~10 working days after receiving notification from the agency,~~
8 ~~fails to cease operation or apply for a license under this~~
9 ~~part commits a felony of the third degree, punishable as~~
10 ~~provided in s. 775.082, s. 775.083, or s. 775.084. Each day of~~
11 ~~continued operation is a separate offense.~~

12 ~~(5) Any clinic that fails to cease operation after~~
13 ~~agency notification may be fined for each day of noncompliance~~
14 ~~pursuant to this part.~~

15 ~~(6) When a person has an interest in more than one~~
16 ~~clinic, and fails to obtain a license for any one of these~~
17 ~~clinics, the agency may revoke the license, impose a~~
18 ~~moratorium, or impose a fine pursuant to this part on any or~~
19 ~~all of the licensed clinics until such time as the unlicensed~~
20 ~~clinic is licensed or ceases operation.~~

21 ~~(7) Any person aware of the operation of an unlicensed~~
22 ~~clinic must report that facility to the agency.~~

23 ~~(8)~~ In addition to the requirements of part II of
24 chapter 408, any health care provider who is aware of the
25 operation of an unlicensed clinic shall report that facility
26 to the agency. Failure to report a clinic that the provider
27 knows or has reasonable cause to suspect is unlicensed shall
28 be reported to the provider's licensing board.

29 ~~(9) The agency may not issue a license to a clinic~~
30 ~~that has any unpaid fines assessed under this part.~~

31

1 Section 170. Section 400.9935, Florida Statutes, is
2 amended to read:

3 400.9935 Clinic responsibilities.--

4 (1) Each clinic shall appoint a medical director or
5 clinic director who shall agree in writing to accept legal
6 responsibility for the following activities on behalf of the
7 clinic. The medical director or the clinic director shall:

8 (a) Have signs identifying the medical director or
9 clinic director posted in a conspicuous location within the
10 clinic readily visible to all patients.

11 (b) Ensure that all practitioners providing health
12 care services or supplies to patients maintain a current
13 active and unencumbered Florida license.

14 (c) Review any patient referral contracts or
15 agreements executed by the clinic.

16 (d) Ensure that all health care practitioners at the
17 clinic have active appropriate certification or licensure for
18 the level of care being provided.

19 (e) Serve as the clinic records owner as defined in s.
20 456.057.

21 (f) Ensure compliance with the recordkeeping, office
22 surgery, and adverse incident reporting requirements of
23 chapter 456, the respective practice acts, and rules adopted
24 under this part and part II of chapter 408.

25 (g) Conduct systematic reviews of clinic billings to
26 ensure that the billings are not fraudulent or unlawful. Upon
27 discovery of an unlawful charge, the medical director or
28 clinic director shall take immediate corrective action. If the
29 clinic performs only the technical component of magnetic
30 resonance imaging, static radiographs, computed tomography, or
31 positron emission tomography, and provides the professional

1 interpretation of such services, in a fixed facility that is
2 accredited by the Joint Commission on Accreditation of
3 Healthcare Organizations or the Accreditation Association for
4 Ambulatory Health Care, and the American College of Radiology;
5 and if, in the preceding quarter, the percentage of scans
6 performed by that clinic which was billed to all personal
7 injury protection insurance carriers was less than 15 percent,
8 the chief financial officer of the clinic may, in a written
9 acknowledgment provided to the agency, assume the
10 responsibility for the conduct of the systematic reviews of
11 clinic billings to ensure that the billings are not fraudulent
12 or unlawful.

13 ~~(2) Any business that becomes a clinic after~~
14 ~~commencing operations must, within 5 days after becoming a~~
15 ~~clinic, file a license application under this part and shall~~
16 ~~be subject to all provisions of this part applicable to a~~
17 ~~clinic.~~

18 (2)~~(3)~~ Any contract to serve as a medical director or
19 a clinic director entered into or renewed by a physician or a
20 licensed health care practitioner in violation of this part is
21 void as contrary to public policy. This subsection shall apply
22 to contracts entered into or renewed on or after March 1,
23 2004.

24 (3)~~(4)~~ All charges or reimbursement claims made by or
25 on behalf of a clinic that is required to be licensed under
26 this part, but that is not so licensed, or that is otherwise
27 operating in violation of this part, are unlawful charges, and
28 therefore are noncompensable and unenforceable.

29 (4)~~(5)~~ Any person establishing, operating, or managing
30 an unlicensed clinic otherwise required to be licensed under
31 this part, or any person who knowingly files a false or

1 | misleading license application or license renewal application,
2 | or false or misleading information related to such application
3 | or department rule, commits a felony of the third degree,
4 | punishable as provided in s. 775.082, s. 775.083, or s.
5 | 775.084.

6 | (5)~~(6)~~ Any licensed health care provider who violates
7 | this part is subject to discipline in accordance with this
8 | chapter and his or her respective practice act.

9 | ~~(7) The agency may fine, or suspend or revoke the~~
10 | ~~license of, any clinic licensed under this part for operating~~
11 | ~~in violation of the requirements of this part or the rules~~
12 | ~~adopted by the agency.~~

13 | ~~(8) The agency shall investigate allegations of~~
14 | ~~noncompliance with this part and the rules adopted under this~~
15 | ~~part.~~

16 | (6)~~(9)~~ Any person or entity providing health care
17 | services which is not a clinic, as defined under s. 400.9905,
18 | may voluntarily apply for a certificate of exemption from
19 | licensure under its exempt status with the agency on a form
20 | that sets forth its name or names and addresses, a statement
21 | of the reasons why it cannot be defined as a clinic, and other
22 | information deemed necessary by the agency. An exemption is
23 | not transferable. The agency may charge an applicant for a
24 | certificate of exemption in an amount equal to \$100 or the
25 | actual cost of processing the certificate, whichever is less.

26 | ~~(10) The clinic shall display its license in a~~
27 | ~~conspicuous location within the clinic readily visible to all~~
28 | ~~patients.~~

29 | (7)~~(11)~~(a) Each clinic engaged in magnetic resonance
30 | imaging services must be accredited by the Joint Commission on
31 | Accreditation of Healthcare Organizations, the American

1 College of Radiology, or the Accreditation Association for
2 Ambulatory Health Care, within 1 year after licensure.
3 However, a clinic may request a single, 6-month extension if
4 it provides evidence to the agency establishing that, for good
5 cause shown, such clinic can not be accredited within 1 year
6 after licensure, and that such accreditation will be completed
7 within the 6-month extension. After obtaining accreditation as
8 required by this subsection, each such clinic must maintain
9 accreditation as a condition of renewal of its license.

10 (b) The agency may deny the application or revoke the
11 license of any entity formed for the purpose of avoiding
12 compliance with the accreditation provisions of this
13 subsection and whose principals were previously principals of
14 an entity that was unable to meet the accreditation
15 requirements within the specified timeframes. The agency may
16 adopt rules as to the accreditation of magnetic resonance
17 imaging clinics.

18 ~~(8)(12)~~ The agency shall give full faith and credit
19 pertaining to any past variance and waiver granted to a
20 magnetic resonance imaging clinic from rule 64-2002, Florida
21 Administrative Code, by the Department of Health, until
22 September 2004. After that date, such clinic must request a
23 variance and waiver from the agency under s. 120.542.

24 Section 171. Sections 400.994 and 400.9945, Florida
25 Statutes, are repealed.

26 Section 172. Section 400.995, Florida Statutes, is
27 amended to read:

28 400.995 Agency administrative penalties.--

29 (1) The agency may deny the application for a license
30 renewal, revoke or suspend the license, and impose
31 administrative fines of up to \$5,000 per violation for

1 | violations of the requirements of this part or rules of the
2 | agency. In determining if a penalty is to be imposed and in
3 | fixing the amount of the fine, the agency shall consider the
4 | following factors:

5 | (a) The gravity of the violation, including the
6 | probability that death or serious physical or emotional harm
7 | to a patient will result or has resulted, the severity of the
8 | action or potential harm, and the extent to which the
9 | provisions of the applicable laws or rules were violated.

10 | (b) Actions taken by the owner, medical director, or
11 | clinic director to correct violations.

12 | (c) Any previous violations.

13 | (d) The financial benefit to the clinic of committing
14 | or continuing the violation.

15 | ~~(2) Each day of continuing violation after the date~~
16 | ~~fixed for termination of the violation, as ordered by the~~
17 | ~~agency, constitutes an additional, separate, and distinct~~
18 | ~~violation.~~

19 | (2)(3) Any action taken to correct a violation shall
20 | be documented in writing by the owner, medical director, or
21 | clinic director of the clinic and verified through followup
22 | visits by agency personnel. The agency may impose a fine and,
23 | in the case of an owner-operated clinic, revoke or deny a
24 | clinic's license when a clinic medical director or clinic
25 | director knowingly misrepresents actions taken to correct a
26 | violation.

27 | ~~(4) For fines that are upheld following administrative~~
28 | ~~or judicial review, the violator shall pay the fine, plus~~
29 | ~~interest at the rate as specified in s. 55.03, for each day~~
30 | ~~beyond the date set by the agency for payment of the fine.~~

31 |

1 ~~(5) Any unlicensed clinic that continues to operate~~
2 ~~after agency notification is subject to a \$1,000 fine per day.~~

3 (3)(6) Any licensed clinic whose owner, medical
4 director, or clinic director concurrently operates an
5 unlicensed clinic shall be subject to an administrative fine
6 of \$5,000 per day.

7 ~~(7) Any clinic whose owner fails to apply for a~~
8 ~~change of ownership license in accordance with s. 400.992 and~~
9 ~~operates the clinic under the new ownership is subject to a~~
10 ~~fine of \$5,000.~~

11 (4)(8) The agency, as an alternative to or in
12 conjunction with an administrative action against a clinic for
13 violations of this part, part II of chapter 408, and adopted
14 rules, shall make a reasonable attempt to discuss each
15 violation and recommended corrective action with the owner,
16 medical director, or clinic director of the clinic, prior to
17 written notification. The agency, instead of fixing a period
18 within which the clinic shall enter into compliance with
19 standards, may request a plan of corrective action from the
20 clinic which demonstrates a good faith effort to remedy each
21 violation by a specific date, subject to the approval of the
22 agency.

23 ~~(9) Administrative fines paid by any clinic under this~~
24 ~~section shall be deposited into the Health Care Trust Fund.~~

25 (5)(10) If the agency issues a notice of intent to
26 deny a license application after a temporary license has been
27 issued pursuant to s. 400.991(3), the temporary license shall
28 expire on the date of the notice and may not be extended
29 during any proceeding for administrative or judicial review
30 pursuant to chapter 120.

31

1 Section 173. Section 408.831, Florida Statutes, is
2 amended to read:

3 408.831 Denial, suspension, or revocation of a
4 license, registration, certificate, or application.--

5 (1) In addition to any other remedies provided by law,
6 the agency may deny each application or suspend or revoke each
7 license, registration, or certificate of entities regulated or
8 licensed by it:

9 (a) If the applicant, licensee, registrant, or
10 certificateholder, or, in the case of a corporation,
11 partnership, or other business entity, if any affiliated
12 business entity, officer, director, agent, or managing
13 employee of that business entity or any affiliated person,
14 partner, or shareholder having an ownership interest equal to
15 5 percent or greater in that business entity, has failed to
16 pay all outstanding fines, liens, or overpayments assessed by
17 final order of the agency or final order of the Centers for
18 Medicare and Medicaid Services, not subject to further appeal,
19 unless a repayment plan is approved by the agency; or

20 (b) For failure to comply with any repayment plan.

21 (2) In reviewing any application requesting a change
22 of ownership or change of the licensee, registrant, or
23 certificateholder, the transferor shall, prior to agency
24 approval of the change, repay or make arrangements to repay
25 any amounts owed to the agency. Should the transferor fail to
26 repay or make arrangements to repay the amounts owed to the
27 agency, the issuance of a license, registration, or
28 certificate to the transferee shall be delayed until repayment
29 or until arrangements for repayment are made.

30 (3) This section provides standards of enforcement
31 applicable to all entities licensed or regulated by the Agency

1 for Health Care Administration. This section controls over any
2 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391,
3 393, 394, 395, 400, 408, 468, 483, ~~and~~ 641, and 765 or rules
4 adopted pursuant to those chapters.

5 Section 174. Subsections (9) and (10) of section
6 440.102, Florida Statutes, are amended to read:

7 440.102 Drug-free workplace program requirements.--The
8 following provisions apply to a drug-free workplace program
9 implemented pursuant to law or to rules adopted by the Agency
10 for Health Care Administration:

11 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--

12 (a) The requirements of part II of chapter 408 apply
13 to the provision of services that necessitate licensure
14 pursuant to s. 440.102 and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to s. 440.102.

17 ~~(b)(a)~~ A laboratory may analyze initial or
18 confirmation test specimens only if:

19 1. The laboratory obtains a license under the
20 requirements of part II of chapter 408 and s. 112.0455(17).
21 Each applicant for licensure and licensee must comply with all
22 requirements of this section, part II of chapter 408, and
23 applicable rules, with the exception of s. 408.810(5)-(10). ~~is~~
24 ~~licensed and approved by the Agency for Health Care~~
25 ~~Administration using criteria established by the United States~~
26 ~~Department of Health and Human Services as general guidelines~~
27 ~~for modeling the state drug testing program pursuant to this~~
28 ~~section or the laboratory is certified by the United States~~
29 ~~Department of Health and Human Services.~~

30 2. The laboratory has written procedures to ensure the
31 chain of custody.

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

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

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

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

13 d. Other necessary and proper actions taken to ensure
14 reliable and accurate drug test results.

15 (c)~~(b)~~ A laboratory shall disclose to the medical
16 review officer a written positive confirmed test result report
17 within 7 working days after receipt of the sample. All
18 laboratory reports of a drug test result must, at a minimum,
19 state:

20 1. The name and address of the laboratory that
21 performed the test and the positive identification of the
22 person tested.

23 2. Positive results on confirmation tests only, or
24 negative results, as applicable.

25 3. A list of the drugs for which the drug analyses
26 were conducted.

27 4. The type of tests conducted for both initial tests
28 and confirmation tests and the minimum cutoff levels of the
29 tests.

30
31

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

4
5 A report must not disclose the presence or absence of any drug
6 other than a specific drug and its metabolites listed pursuant
7 to this section.

8 ~~(d)(e)~~ The laboratory shall submit to the Agency for
9 Health Care Administration a monthly report with statistical
10 information regarding the testing of employees and job
11 applicants. The report must include information on the methods
12 of analysis conducted, the drugs tested for, the number of
13 positive and negative results for both initial tests and
14 confirmation tests, and any other information deemed
15 appropriate by the Agency for Health Care Administration. A
16 monthly report must not identify specific employees or job
17 applicants.

18 (10) RULES.--The Agency for Health Care Administration
19 shall adopt rules pursuant to s. 112.0455, part II of chapter
20 408, and criteria established by the United States Department
21 of Health and Human Services as general guidelines for
22 modeling drug-free workplace laboratories ~~the state~~
23 ~~drug testing program~~, concerning, but not limited to:

24 (a) Standards for licensing drug-testing laboratories
25 and suspension and revocation of such licenses.

26 (b) Urine, hair, blood, and other body specimens and
27 minimum specimen amounts that are appropriate for drug
28 testing.

29 (c) Methods of analysis and procedures to ensure
30 reliable drug-testing results, including standards for initial
31 tests and confirmation tests.

1 (d) Minimum cutoff detection levels for each drug or
2 metabolites of such drug for the purposes of determining a
3 positive test result.

4 (e) Chain-of-custody procedures to ensure proper
5 identification, labeling, and handling of specimens tested.

6 (f) Retention, storage, and transportation procedures
7 to ensure reliable results on confirmation tests and retests.

8 Section 175. Subsection (3) is added to section
9 483.035, Florida Statutes, to read:

10 483.035 Clinical laboratories operated by
11 practitioners for exclusive use; licensure and regulation.--

12 (3) The requirements of part II of chapter 408 apply
13 to the provision of services that necessitate licensure
14 pursuant to this part and part II of chapter 408 and to
15 entities licensed by or applying for such licensure from the
16 Agency for Health Care Administration pursuant to this part.
17 However, each applicant for licensure and licensee is exempt
18 from s. 408.810(5)-(10).

19 Section 176. Subsection (1) of section 483.051,
20 Florida Statutes, is amended to read:

21 483.051 Powers and duties of the agency.--The agency
22 shall adopt rules to implement this part, which rules must
23 include, but are not limited to, the following:

24 (1) LICENSING; QUALIFICATIONS.--The agency shall
25 provide for biennial licensure of all clinical laboratories
26 meeting the requirements of this part and shall prescribe the
27 qualifications necessary for such licensure. ~~A license issued~~
28 ~~for operating a clinical laboratory, unless sooner suspended~~
29 ~~or revoked, expires on the date set forth by the agency on the~~
30 ~~face of the license.~~

31

1 Section 177. Section 483.061, Florida Statutes, is
2 amended to read:

3 483.061 Inspection of clinical laboratories.--

4 (1) The agency shall ensure that each clinical
5 laboratory subject to this part is inspected either onsite or
6 offsite when deemed necessary by the agency, but at least
7 every 2 years, for the purpose of evaluating the operation,
8 supervision, and procedures of the facility to ensure
9 compliance with this part. Collection stations and branch
10 offices may be inspected either onsite or offsite, when deemed
11 necessary by the agency. ~~The agency may conduct or cause to be~~
12 ~~conducted the following announced or unannounced inspections~~
13 ~~at any reasonable time:~~

14 ~~(a) An inspection conducted at the direction of the~~
15 ~~federal Health Care Financing Administration.~~

16 ~~(b) A licensure inspection.~~

17 ~~(c) A validation inspection.~~

18 ~~(d)~~ A complaint investigation, including a full
19 licensure investigation with a review of all licensure
20 standards as outlined in rule. Complaints received by the
21 agency from individuals, organizations, or other sources are
22 subject to review and investigation by the agency. If a
23 complaint has been filed against a laboratory or if a
24 laboratory has a substantial licensure deficiency, the agency
25 may inspect the laboratory annually or as the agency considers
26 necessary.

27 (2) However, for laboratories operated under s.
28 483.035, biennial licensure inspections shall be scheduled so
29 as to cause the least disruption to the practitioner's
30 scheduled patients.

31

1 ~~(2) The right of entry and inspection is extended to~~
2 ~~any premises that is maintained as a laboratory without a~~
3 ~~license, but such entry or inspection may not be made without~~
4 ~~the permission of the owner or person in charge of the~~
5 ~~laboratory, unless an inspection warrant as defined in s.~~
6 ~~933.20 is first obtained.~~

7 (3) The agency may ~~shall~~ inspect an out-of-state
8 clinical laboratory under this section at the expense of the
9 out-of-state clinical laboratory to determine whether the
10 laboratory meets the requirements of this part and part II of
11 chapter 408.

12 (4) The agency shall accept, in lieu of its own
13 periodic inspections for licensure, the survey of or
14 inspection by private accrediting organizations that perform
15 inspections of clinical laboratories accredited by such
16 organizations, including postinspection activities required by
17 the agency.

18 (a) The agency shall accept inspections performed by
19 such organizations if the accreditation is not provisional, if
20 such organizations perform postinspection activities required
21 by the agency and provide the agency with all necessary
22 inspection and postinspection reports and information
23 necessary for enforcement, if such organizations apply
24 standards equal to or exceeding standards established and
25 approved by the agency, and if such accrediting organizations
26 are approved by the federal Health Care Financing
27 Administration to perform such inspections.

28 (b) The agency may conduct complaint investigations
29 made against laboratories inspected by accrediting
30 organizations.
31

1 (c) The agency may conduct sample validation
2 inspections of laboratories inspected by accrediting
3 organizations to evaluate the accreditation process used by an
4 accrediting organization.

5 (d) The agency may conduct a full inspection if an
6 accrediting survey has not been conducted within the previous
7 24 months, and the laboratory must pay the appropriate
8 inspection fee under s. 483.172.

9 (e) The agency shall develop, and adopt, by rule,
10 criteria for accepting inspection and postinspection reports
11 of accrediting organizations in lieu of conducting a state
12 licensure inspection.

13 Section 178. Section 483.091, Florida Statutes, is
14 amended to read:

15 483.091 Clinical laboratory license.--~~A person may not~~
16 ~~conduct, maintain, or operate a clinical laboratory in this~~
17 ~~state, except a laboratory that is exempt under s. 483.031,~~
18 ~~unless the clinical laboratory has obtained a license from the~~
19 ~~agency.~~ A clinical laboratory may not send a specimen drawn
20 within this state to any clinical laboratory outside the state
21 for examination unless the out-of-state laboratory has
22 obtained a license from the agency. ~~A license is valid only~~
23 ~~for the person or persons to whom it is issued and may not be~~
24 ~~sold, assigned, or transferred, voluntarily or involuntarily,~~
25 ~~and is not valid for any premises other than those for which~~
26 ~~the license is issued.~~ However, A new license may be secured
27 for the new location before the actual change, if the
28 contemplated change complies with this part, part II of
29 chapter 408, and applicable the rules ~~adopted under this part.~~
30 ~~Application for a new clinical laboratory license must be made~~
31

1 ~~60 days before a change in the ownership of the clinical~~
2 ~~laboratory.~~

3 Section 179. Section 483.101, Florida Statutes, is
4 amended to read:

5 483.101 Application for clinical laboratory license.--

6 ~~(1) An application for a clinical laboratory license~~
7 ~~must be made under oath by the owner or director of the~~
8 ~~clinical laboratory or by the public official responsible for~~
9 ~~operating a state, municipal, or county clinical laboratory or~~
10 ~~institution that contains a clinical laboratory, upon forms~~
11 ~~provided by the agency.~~

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

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

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

30 ~~(c) Proof of compliance with the level 2 background~~
31 ~~screening requirements of chapter 435 which has been submitted~~

1 ~~within the previous 5 years in compliance with any other~~
2 ~~health care licensure requirements of this state is acceptable~~
3 ~~in fulfillment of the requirements of paragraph (a).~~

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

26 ~~(e) Each applicant must submit to the agency, with its~~
27 ~~application, a description and explanation of any exclusions,~~
28 ~~permanent suspensions, or terminations of the applicant from~~
29 ~~the Medicare or Medicaid programs. Proof of compliance with~~
30 ~~the requirements for disclosure of ownership and control~~

31

1 ~~interests under the Medicaid or Medicare programs may be~~
2 ~~accepted in lieu of this submission.~~

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

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

28 ~~(h) The agency may deny or revoke licensure if the~~
29 ~~applicant:~~

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

1 ~~omitted any material fact from the application required by~~
2 ~~paragraph (e) or paragraph (f); or~~

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

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

8 (3) A license must be issued authorizing the
9 performance of one or more clinical laboratory procedures or
10 one or more tests on each specialty or subspecialty. A
11 separate license is required of all laboratories maintained on
12 separate premises even if the laboratories are operated under
13 the same management. ~~Upon receipt of a request for an~~
14 ~~application for a clinical laboratory license, the agency~~
15 ~~shall provide to the applicant a copy of the rules relating to~~
16 ~~licensure and operations applicable to the laboratory for~~
17 ~~which licensure is sought.~~

18 Section 180. Section 483.111, Florida Statutes, is
19 amended to read:

20 483.111 Limitations on licensure.--A license may be
21 issued to a clinical laboratory to perform only those clinical
22 laboratory procedures and tests that are within the
23 specialties or subspecialties in which the clinical laboratory
24 personnel are qualified. A license may not be issued unless
25 the agency determines that the clinical laboratory is
26 adequately staffed and equipped to operate in conformity with
27 the requirements of this part, part II of chapter 408, and
28 applicable ~~the rules adopted under this part.~~

29 Section 181. Section 483.131, Florida Statutes, is
30 repealed.

31

1 Section 182. Subsections (1) and (2) of section
2 483.172, Florida Statutes, are amended to read:

3 483.172 License fees.--

4 (1) In accordance with s. 408.805, an applicant or
5 licensee shall pay a fee for each license application
6 submitted under this part, part II of chapter 408, and
7 applicable rules. ~~The agency shall collect fees for all~~
8 licenses issued under this part. ~~Each fee is due at the time~~
9 of application and must be payable to the agency to be
10 deposited in the Health Care Trust Fund administered by the
11 agency.

12 (2) The biennial license fee schedule is as follows,
13 unless modified by rule:

14 (a) If a laboratory performs not more than 2,000 tests
15 annually, the fee is \$400.

16 (b) If a laboratory performs not more than 3
17 categories of procedures with a total annual volume of more
18 than 2,000 but no more than 10,000 tests, the license fee is
19 \$965.

20 (c) If a laboratory performs at least 4 categories of
21 procedures with a total annual volume of not more than 10,000
22 tests, the license fee is \$1,294.

23 (d) If a laboratory performs not more than 3
24 categories of procedures with a total annual volume of more
25 than 10,000 but not more than 25,000 tests, the license fee is
26 \$1,592.

27 (e) If a laboratory performs at least 4 categories of
28 procedures with a total annual volume of more than 10,000 but
29 not more than 25,000 tests, the license fee is \$2,103.

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1 (f) If a laboratory performs a total of more than
2 25,000 but not more than 50,000 tests annually, the license
3 fee is \$2,364.

4 (g) If a laboratory performs a total of more than
5 50,000 but not more than 75,000 tests annually, the license
6 fee is \$2,625.

7 (h) If a laboratory performs a total of more than
8 75,000 but not more than 100,000 tests annually, the license
9 fee is \$2,886.

10 (i) If a laboratory performs a total of more than
11 100,000 but not more than 500,000 tests annually, the license
12 fee is \$3,397.

13 (j) If a laboratory performs a total of more than
14 500,000 but not more than 1 million tests annually, the
15 license fee is \$3,658.

16 (k) If a laboratory performs a total of more than 1
17 million tests annually, the license fee is \$3,919.

18 Section 183. Section 483.201, Florida Statutes, is
19 amended to read:

20 483.201 Grounds for disciplinary action against
21 clinical laboratories.--In addition to the requirements of
22 part II of chapter 408, the following acts constitute grounds
23 for which a disciplinary action specified in s. 483.221 may be
24 taken against a clinical laboratory:

25 ~~(1) Making a fraudulent statement on an application~~
26 ~~for a clinical laboratory license or any other document~~
27 ~~required by the agency.~~

28 (1)(2) Permitting unauthorized persons to perform
29 technical procedures or to issue reports.

30
31

1 ~~(2)(3)~~ Demonstrating incompetence or making consistent
2 errors in the performance of clinical laboratory examinations
3 and procedures or erroneous reporting.

4 ~~(3)(4)~~ Performing a test and rendering a report
5 thereon to a person not authorized by law to receive such
6 services.

7 ~~(4)(5)~~ Knowingly having professional connection with
8 or knowingly lending the use of the name of the licensed
9 clinical laboratory or its director to an unlicensed clinical
10 laboratory.

11 ~~(5)(6)~~ Violating or aiding and abetting in the
12 violation of any provision of this part or the rules adopted
13 under this part.

14 ~~(6)(7)~~ Failing to file any report required by the
15 provisions of this part or the rules adopted under this part.

16 ~~(7)(8)~~ Reporting a test result for a clinical specimen
17 if the test was not performed on the clinical specimen.

18 ~~(8)(9)~~ Performing and reporting tests in a specialty
19 or subspecialty in which the laboratory is not licensed.

20 ~~(9)(10)~~ Knowingly advertising false services or
21 credentials.

22 ~~(10)(11)~~ Failing to correct deficiencies within the
23 time required by the agency.

24 Section 184. Section 483.221, Florida Statutes, is
25 amended to read:

26 483.221 Administrative fines ~~penalties~~.--

27 ~~(1)(a)~~ In accordance with part II of chapter 408, the
28 agency may ~~deny, suspend, revoke, annul, limit, or deny~~
29 ~~renewal of a license or~~ impose an administrative fine, not to
30 exceed \$1,000 per violation, for the violation of any
31 provision of this part or rules adopted under this part. ~~Each~~

1 ~~day of violation constitutes a separate violation and is~~
2 ~~subject to a separate fine.~~

3 ~~(2)(b)~~ In determining the penalty to be imposed for a
4 violation, as provided in subsection (1) ~~paragraph (a)~~, the
5 following factors must be considered:

6 ~~(a)1.~~ The severity of the violation, including the
7 probability that death or serious harm to the health or safety
8 of any person will result or has resulted; the severity of the
9 actual or potential harm; and the extent to which the
10 provisions of this part were violated.

11 ~~(b)2.~~ Actions taken by the licensee to correct the
12 violation or to remedy complaints.

13 ~~(c)3.~~ Any previous violation by the licensee.

14 ~~(d)4.~~ The financial benefit to the licensee of
15 committing or continuing the violation.

16 ~~(c) All amounts collected under this section must be~~
17 ~~deposited into the Health Care Trust Fund administered by the~~
18 ~~agency.~~

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

24 Section 185. Section 483.23, Florida Statutes, is
25 amended to read:

26 483.23 Offenses; criminal penalties.--

27 (1)(a) It is unlawful for any person to:

28 1. ~~Operate, maintain, direct, or engage in the~~
29 ~~business of operating a clinical laboratory unless she or he~~
30 ~~has obtained a clinical laboratory license from the agency or~~
31 ~~is exempt under s. 483.031.~~

1 ~~1.2.~~ Conduct, maintain, or operate a clinical
2 laboratory, other than an exempt laboratory or a laboratory
3 operated under s. 483.035, unless the clinical laboratory is
4 under the direct and responsible supervision and direction of
5 a person licensed under part III of this chapter.

6 ~~2.3.~~ Allow any person other than an individual
7 licensed under part III of this chapter to perform clinical
8 laboratory procedures, except in the operation of a laboratory
9 exempt under s. 483.031 or a laboratory operated under s.
10 483.035.

11 ~~3.4.~~ Violate or aid and abet in the violation of any
12 provision of this part or the rules adopted under this part.

13 (b) The performance of any act specified in paragraph
14 (a) constitutes a misdemeanor of the second degree, punishable
15 as provided in s. 775.082 or s. 775.083.

16 (2) Any use or attempted use of a forged license under
17 this part or part ~~IV~~ ~~III~~ of this chapter constitutes the crime
18 of forgery.

19 Section 186. Section 483.25, Florida Statutes, is
20 repealed.

21 Section 187. Section 483.291, Florida Statutes, is
22 amended to read:

23 483.291 Powers and duties of the agency; rules.--The
24 agency shall adopt rules to implement this part and part II of
25 chapter 408, which rules must include the following:

26 (1) LICENSING STANDARDS.--The agency ~~shall license all~~
27 ~~multiphasic health testing centers meeting the requirements of~~
28 ~~this part and~~ shall prescribe standards necessary for
29 licensure.

30 (2) FEES.--In accordance with s. 408.805, an applicant
31 or licensee shall pay a fee for each license application

1 submitted under this part, part II of chapter 408, and
2 applicable rules. ~~The agency shall establish annual fees,~~
3 ~~which shall be reasonable in amount, for licensing of centers.~~
4 ~~The fees must be sufficient in amount to cover the cost of~~
5 ~~licensing and inspecting centers.~~

6 (a) ~~The annual licensure fee is due at the time of~~
7 ~~application and is payable to the agency to be deposited in~~
8 ~~the Health Care Trust Fund administered by the agency. The~~
9 ~~license fee must be not less than \$600 \$300 or more than~~
10 \$2,000 per biennium \$1,000.

11 (b) ~~The fee for late filing of an application for~~
12 ~~license renewal is \$200 and is in addition to the licensure~~
13 ~~fee due for renewing the license.~~

14 (3) ~~ANNUAL LICENSING.~~ ~~The agency shall provide for~~
15 ~~annual licensing of centers. Any center that fails to pay the~~
16 ~~proper fee or otherwise fails to qualify by the date of~~
17 ~~expiration of its license is delinquent, and its license is~~
18 ~~automatically canceled without notice or further proceeding.~~
19 ~~Upon cancellation of its license under this subsection, a~~
20 ~~center may have its license reinstated only upon application~~
21 ~~and qualification as provided for initial applicants and upon~~
22 ~~payment of all delinquent fees.~~

23 (3)(4) STANDARDS OF PERFORMANCE. ~~--~~ ~~The agency shall~~
24 ~~prescribe standards for the performance of health testing~~
25 ~~procedures.~~

26 (4)(5) CONSTRUCTION OF CENTERS. ~~--~~ ~~The agency may adopt~~
27 ~~rules to ensure that centers comply with all local, county,~~
28 ~~state, and federal standards for the construction, renovation,~~
29 ~~maintenance, or repair of centers, which standards must ensure~~
30 ~~the conduct and operation of the centers in a manner that will~~
31 ~~protect the public health.~~

1 ~~(5)~~(6) SAFETY AND SANITARY CONDITIONS WITHIN THE
2 CENTER AND ITS SURROUNDINGS.--The agency shall establish
3 standards relating to safety and sanitary conditions within
4 the center and its surroundings, including water supply;
5 sewage; the handling of specimens; identification,
6 segregation, and separation of biohazardous waste as required
7 by s. 381.0098; storage of chemicals; workspace; firesafety;
8 and general measures, which standards must ensure the
9 protection of the public health. The agency shall determine
10 compliance by a multiphasic health testing center with the
11 requirements of s. 381.0098 by verifying that the center has
12 obtained all required permits.

13 ~~(6)~~(7) EQUIPMENT.--The agency shall establish minimum
14 standards for center equipment essential to the proper conduct
15 and operation of the center.

16 ~~(7)~~(8) PERSONNEL.--The agency shall prescribe minimum
17 qualifications for center personnel. A center may employ as a
18 medical assistant a person who has at least one of the
19 following qualifications:

20 (a) Prior experience of not less than 6 months as a
21 medical assistant in the office of a licensed medical doctor
22 or osteopathic physician or in a hospital, an ambulatory
23 surgical center, a home health agency, or a health maintenance
24 organization.

25 (b) Certification and registration by the American
26 Medical Technologists Association or other similar
27 professional association approved by the agency.

28 (c) Prior employment as a medical assistant in a
29 licensed center for at least 6 consecutive months at some time
30 during the preceding 2 years.

31

1 Section 188. Section 483.294, Florida Statutes, is
2 amended to read:

3 483.294 Inspection of centers.--The agency shall, at
4 least once annually, inspect the premises and operations of
5 all centers subject to licensure under this part, ~~without~~
6 ~~prior notice to the centers, for the purpose of studying and~~
7 ~~evaluating the operation, supervision, and procedures of such~~
8 ~~facilities, to determine their compliance with agency~~
9 ~~standards and to determine their effect upon the health and~~
10 ~~safety of the people of this state.~~

11 Section 189. Section 483.30, Florida Statutes, is
12 amended to read:

13 483.30 Licensing of centers.--

14 ~~(1)~~ The requirements of part II of chapter 408 apply
15 to the provision of services that necessitate licensure
16 pursuant to this part and part II of chapter 408 and to
17 entities licensed by or applying for such licensure from the
18 Agency for Health Care Administration pursuant to this part.
19 However, each applicant for licensure and licensee is exempt
20 from s. 408.810(5)-(10). A person may not conduct, maintain,
21 or operate a multiphasic health testing center in this state
22 without obtaining a multiphasic health testing center license
23 from the agency. The license is valid only for the person or
24 persons to whom it is issued and may not be sold, assigned, or
25 transferred, voluntarily or involuntarily. A license is not
26 valid for any premises other than the center for which it is
27 issued. However, a new license may be secured for the new
28 location for a fixed center before the actual change, if the
29 contemplated change is in compliance with this part and the
30 rules adopted under this part. A center must be relicensed if
31

1 ~~a change of ownership occurs. Application for relicensure~~
2 ~~must be made 60 days before the change of ownership.~~

3 ~~(2) Each applicant for licensure must comply with the~~
4 ~~following requirements:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Section 190. Section 483.302, Florida Statutes, is
30 amended to read:

31 483.302 Application for license.--

1 ~~(1) Application for a license as required by s. 483.30~~
2 ~~must be made to the agency on forms furnished by it and must~~
3 ~~be accompanied by the appropriate license fee.~~

4 ~~(2)~~ The application for a license must ~~shall~~ contain:

5 ~~(1)(a)~~ A determination as to whether the facility will
6 be fixed or mobile and the location for a fixed facility.

7 ~~(b) The name and address of the owner if an~~
8 ~~individual; if the owner is a firm, partnership, or~~
9 ~~association, the name and address of every member thereof; if~~
10 ~~the owner is a corporation, its name and address and the name~~
11 ~~and address of its medical director and officers and of each~~
12 ~~person having at least a 10 percent interest in the~~
13 ~~corporation.~~

14 ~~(2)(c)~~ The name of any person ~~whose name is required~~
15 ~~on the application under the provisions of paragraph (b) and~~
16 who owns at least a 10 percent interest in any professional
17 service, firm, association, partnership, or corporation
18 providing goods, leases, or services to the center for which
19 the application is made, and the name and address of the
20 professional service, firm, association, partnership, or
21 corporation in which such interest is held.

22 ~~(d) The name by which the facility is to be known.~~

23 ~~(3)(e)~~ The name, address, and Florida physician's
24 license number of the medical director.

25 Section 191. Section 483.311 and subsection (1) of
26 section 483.317, Florida Statutes, are repealed.

27 Section 192. Section 483.32, Florida Statutes, is
28 amended to read:

29 483.32 Administrative fines ~~penalties~~.--

30 ~~(1)(a)~~ The agency may ~~deny, suspend, revoke, annul,~~
31 ~~limit, or deny renewal of a license or impose an~~

1 administrative fine, not to exceed \$500 per violation, for the
2 violation of any provision of this part, part II of chapter
3 408, or applicable rules ~~adopted under this part. Each day of~~
4 ~~violation constitutes a separate violation and is subject to a~~
5 ~~separate fine.~~

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

9 ~~(a)1-~~ The severity of the violation, including the
10 probability that death or serious harm to the health or safety
11 of any person will result or has resulted; the severity of the
12 actual or potential harm; and the extent to which the
13 provisions of this part were violated.

14 ~~(b)2-~~ Actions taken by the licensee to correct the
15 violation or to remedy complaints.

16 ~~(c)3-~~ Any previous violation by the licensee.

17 ~~(d)4-~~ The financial benefit to the licensee of
18 committing or continuing the violation.

19 ~~(c) All amounts collected under this section must be~~
20 ~~deposited into the Health Care Trust Fund administered by the~~
21 ~~agency.~~

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

27 Section 193. Subsection (1) of section 483.322 and
28 section 483.328, Florida Statutes, are repealed.

29 Section 194. Section 765.541, Florida Statutes, is
30 amended to read:

31

1 765.541 Certification of organizations engaged in the
2 practice of cadaveric organ and tissue procurement.--The
3 Agency for Health Care Administration shall:

4 (1) Establish a program for the certification of
5 organizations, agencies, or other entities engaged in the
6 procurement of organs, tissues, and eyes for transplantation;

7 (2) Adopt rules that set forth appropriate standards
8 and guidelines for the program in accordance with ss.

9 765.541-765.546 and part II of chapter 408. These standards

10 and guidelines must be substantially based on the existing
11 laws of the Federal Government and this state and the existing
12 standards and guidelines of the United Network for Organ
13 Sharing (UNOS), the American Association of Tissue Banks
14 (AATB), the South-Eastern Organ Procurement Foundation
15 (SEOPF), the North American Transplant Coordinators
16 Organization (NATCO), and the Eye Bank Association of America
17 (EBAA). In addition, the Agency for Health Care Administration
18 shall, before adopting these standards and guidelines, seek
19 input from all organ procurement organizations, tissue banks,
20 and eye banks based in this state;

21 (3) Collect, keep, and make available to the Governor
22 and the Legislature information regarding the numbers and
23 disposition of organs and tissues procured by each certified
24 entity;

25 (4) Monitor participating facilities and agencies for
26 program compliance; and

27 (5) Provide for the administration of the Organ and
28 Tissue Procurement and Transplantation Advisory Board.

29 Section 195. Subsection (1) of section 765.542,
30 Florida Statutes, is amended to read:

31

1 765.542 Certification of organ procurement
2 organizations, tissue banks, and eye banks.--

3 (1) The requirements of part II of chapter 408 apply
4 to the provision of services that necessitate licensure
5 pursuant to ss. 765.541-765.546 and part II of chapter 408 and
6 to entities licensed or certified by or applying for such
7 licensure or certification from the Agency for Health Care
8 Administration pursuant to ss. 765.541-765.546. However, each
9 applicant for licensure or certification and certificate
10 holder is exempt from s. 408.810(5)-(10). An organization,
11 agency, or other entity may not engage in the practice of
12 organ procurement in this state without being designated as an
13 organ procurement organization by the secretary of the United
14 States Department of Health and Human Services and being
15 appropriately certified by the Agency for Health Care
16 Administration. As used in this subsection, the term
17 "procurement" includes the retrieval, processing, or
18 distribution of human organs. A physician or organ procurement
19 organization based outside this state is exempt from these
20 certification requirements if:

21 (a) The organs are procured for an out-of-state
22 patient who is listed on, or referred through, the United
23 Network for Organ Sharing System; and

24 (b) The organs are procured through an agreement of an
25 organ procurement organization certified by the state.

26 Section 196. Section 765.544, Florida Statutes, is
27 amended to read:

28 765.544 Fees; Florida Organ and Tissue Donor Education
29 and Procurement Trust Fund.--

30 (1) In accordance with s. 408.805, an applicant or
31 certificate holder shall pay a fee for each application

1 submitted under this part, part II of chapter 408, and
2 applicable rules. The amount of the fee shall be as follows
3 unless modified by rule: The Agency for Health Care
4 ~~Administration shall collect~~

5 (a) An initial application fee of \$1,000 from organ
6 procurement organizations and tissue banks and \$500 from eye
7 banks. ~~The fee must be submitted with each application for~~
8 ~~initial certification and is nonrefundable.~~

9 (b)(2) ~~The Agency for Health Care Administration shall~~
10 ~~assess~~ Annual fees to be used, in the following order of
11 priority, for the certification program, the advisory board,
12 maintenance of the organ and tissue donor registry, and the
13 organ and tissue donor education program in the following
14 amounts, which may not exceed \$35,000 per organization:

15 1.(a) Each general organ procurement organization
16 shall pay the greater of \$1,000 or 0.25 percent of its total
17 revenues produced from procurement activity in this state by
18 the certificateholder during its most recently completed
19 fiscal year or operational year.

20 2.(b) Each bone and tissue procurement agency or bone
21 and tissue bank shall pay the greater of \$1,000 or 0.25
22 percent of its total revenues from procurement and processing
23 activity in this state by the certificateholder during its
24 most recently completed fiscal year or operational year.

25 3.(c) Each eye bank shall pay the greater of \$500 or
26 0.25 percent of its total revenues produced from procurement
27 activity in this state by the certificateholder during its
28 most recently completed fiscal year or operational year.

29 (2)(3) The Agency for Health Care Administration shall
30 specify provide by rule the for administrative penalties for
31 the purpose of ensuring adherence to the standards of quality

1 and practice required by this chapter, part II of chapter 408,
2 and applicable rules of the agency for continued
3 certification.

4 ~~(3)(4)~~(a) Proceeds from fees, administrative
5 penalties, and surcharges collected pursuant to this section
6 ~~subsections (2) and (3)~~ must be deposited into the Florida
7 Organ and Tissue Donor Education and Procurement Trust Fund
8 created by s. 765.52155.

9 (b) Moneys deposited in the trust fund pursuant to
10 this section must be used exclusively for the implementation,
11 administration, and operation of the certification program and
12 the advisory board, for maintaining the organ and tissue donor
13 registry, and for organ and tissue donor education.

14 ~~(4)(5)~~ As used in this section, the term "procurement
15 activity in this state" includes the bringing into this state
16 for processing, storage, distribution, or transplantation of
17 organs or tissues that are initially procured in another state
18 or country.

19 Section 197. In case of conflict between the
20 provisions of part II of chapter 408, Florida Statutes, and
21 the authorizing statutes governing the licensure of health
22 care providers by the Agency for Health Care Administration
23 found in chapter 112, chapter 383, chapter 390, chapter 394,
24 chapter 395, chapter 400, chapter 440, chapter 483, or chapter
25 765, Florida Statutes, the provisions of part II of chapter
26 408, Florida Statutes, shall prevail.

27 Section 198. Rules adopted by the Department of
28 Elderly Affairs pursuant to parts III, V, VI, and VII of
29 chapter 400, Florida Statutes, shall be transferred to the
30 Agency for Health Care Administration.

31

