

By Senator Saunders

37-1242A-06

1 A bill to be entitled
2 An act relating to the licensure of health care
3 providers; creating parts I, II, III, and IV of
4 ch. 408, F.S.; creating s. 408.801, F.S.;
5 designating part II of ch. 408, F.S.,
6 consisting of ss. 408.801-408.820, F.S., as the
7 "Health Care Licensing Procedures Act";
8 providing legislative findings and purpose;
9 creating s. 408.802, F.S.; providing
10 applicability; creating s. 408.803, F.S.;
11 providing definitions; creating s. 408.804,
12 F.S.; requiring providers to have and display a
13 license from the Agency for Health Care
14 Administration; providing limitations; creating
15 s. 408.805, F.S.; establishing license fees;
16 providing a method for calculating annual
17 adjustment of fees; creating s. 408.806, F.S.;
18 providing a license application process;
19 requiring specified information to be included
20 on the application; requiring payment of late
21 fees under certain circumstances; requiring
22 inspections; providing an exception;
23 authorizing the Agency for Health Care
24 Administration to establish procedures and
25 rules for the electronic transmission of
26 required information; creating s. 408.807,
27 F.S.; providing procedures for a change of
28 ownership by a licensee; requiring the
29 transferor to notify the agency in writing
30 within a specified period; providing for duties
31 and liability of the transferor; providing for

1 maintenance of records; creating s. 408.808,
2 F.S.; providing license categories and
3 requirements therefor; creating s. 408.809,
4 F.S.; requiring background screening of
5 specified employees; providing for submission
6 of proof of compliance, under certain
7 circumstances; providing conditions for
8 granting provisional and standard licenses;
9 providing an exception to screening
10 requirements; creating s. 408.810, F.S.;
11 providing minimum licensure requirements;
12 providing procedures for discontinuance of
13 operation and surrender of a license; requiring
14 forwarding of client records; requiring
15 publication of a notice of discontinuance of
16 operation by a provider; providing penalties;
17 providing for statewide toll-free telephone
18 numbers for reporting complaints and abusive,
19 neglectful, or exploitative practices;
20 requiring that a provider provide proof of a
21 legal right to occupy property, proof of
22 insurance, and proof of financial viability,
23 under certain circumstances; requiring
24 disclosure of information relating to financial
25 instability; providing a penalty; prohibiting
26 the agency from licensing a health care
27 provider that does not have a certificate of
28 need or an exemption; creating s. 408.811,
29 F.S.; providing for inspections and
30 investigations by the agency to determine
31 compliance; providing that inspection reports

1 are public records; requiring retention of
2 records for a specified period; creating s.
3 408.812, F.S.; prohibiting certain unlicensed
4 activity by a provider; requiring unlicensed
5 providers to cease activity; providing
6 penalties; requiring the reporting of
7 unlicensed providers; creating s. 408.813,
8 F.S.; authorizing the agency to impose
9 administrative fines; creating s. 408.814,
10 F.S.; providing conditions for the agency to
11 impose a moratorium or emergency suspension
12 against a provider; requiring notice; creating
13 s. 408.815, F.S.; providing grounds for denial
14 or revocation of a license or
15 change-of-ownership application; providing
16 conditions for continuing operation; exempting
17 renewal applications from provisions requiring
18 the agency to approve or deny an application
19 within a specified period, under certain
20 circumstances; creating s. 408.816, F.S.;
21 authorizing the agency to institute injunction
22 proceedings, under certain circumstances;
23 creating s. 408.817, F.S.; providing a basis
24 for review of administrative proceedings
25 challenging licensure enforcement action by the
26 agency; creating s. 408.818, F.S.; requiring
27 fees and fines related to health care licensing
28 to be deposited into the Health Care Trust
29 Fund; creating s. 408.819, F.S.; authorizing
30 the agency to adopt rules; providing a
31 timeframe for compliance; creating s. 408.820,

1 F.S.; providing exemptions from specified
2 requirements of part II of ch. 408, F.S.;
3 amending s. 400.801, F.S.; providing that the
4 definition of the term "homes for special
5 services" applies to sites licensed by the
6 agency after a certain date; amending s.
7 400.9905, F.S.; revising the types of entities
8 providing oncology or radiation therapy
9 services which are included within the
10 definition of the word "entities" for purposes
11 of the Health Care Clinic Act; amending s.
12 408.831, F.S.; revising provisions relating to
13 agency action to deny, suspend, or revoke a
14 license, registration, certificate, or
15 application; conforming cross-references;
16 providing for priority of application in case
17 of conflict; authorizing the agency to adjust
18 annual licensure fees to provide biennial
19 licensure fees; requiring the Division of
20 Statutory Revision to assist in preparing
21 conforming legislation; authorizing the agency
22 to issue licenses for less than a specified
23 time period and providing conditions therefor;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Part I of chapter 408, Florida Statutes,
29 consisting of sections 408.031, 408.032, 408.033, 408.034,
30 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039,
31 408.040, 408.041, 408.042, 408.043, 408.044, 408.045,

1 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08,
2 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20,
3 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057,
4 and 408.7071, Florida Statutes, is created and entitled
5 "Health Facility and Services Planning."

6 Section 2. Part II of chapter 408, Florida Statutes,
7 consisting of sections 408.801, 408.802, 408.803, 408.804,
8 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
9 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
10 408.819, 408.820, and 408.831, Florida Statutes, is created
11 and entitled "Health Care Licensing: General Provisions."

12 Section 3. Part III of chapter 408, Florida Statutes,
13 consisting of sections 408.90, 408.901, 408.902, 408.903,
14 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909,
15 Florida Statutes, is created and entitled "Health Insurance
16 Access."

17 Section 4. Part IV of chapter 408, Florida Statutes,
18 consisting of sections 408.911, 408.913, 408.914, 408.915,
19 408.916, 408.917, and 408.918, Florida Statutes, is created
20 and entitled "Health and Human Services Eligibility Access
21 System."

22 Section 5. Sections 408.801, 408.802, 408.803,
23 408.804, 408.805, 408.806, 408.807, 408.808, 408.809, 408.810,
24 408.811, 408.812, 408.813, 408.814, 408.815, 408.816, 408.817,
25 408.818, 408.819, and 408.820, Florida Statutes, are created
26 to read:

27 408.801 Short title; purpose.--

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

30 (2) The Legislature finds that there is unnecessary
31 duplication and variation in the requirements for licensure by

1 the Agency for Health Care Administration. It is the intent of
2 the Legislature to provide a streamlined and consistent set of
3 basic licensing requirements for all such providers in order
4 to minimize confusion, standardize terminology, and include
5 issues that are not otherwise adequately addressed in the
6 Florida Statutes pertaining to specific providers.

7 408.802 Applicability.--The provisions of this part
8 apply to the provision of services that require licensure as
9 defined in this part and to the following entities licensed,
10 registered, or certified by the Agency for Health Care
11 Administration, as described in chapters 112, 383, 390, 394,
12 395, 400, 440, 483, and 765:

13 (1) Laboratories authorized to perform testing under
14 the Drug-Free Workplace Act, as provided under ss. 112.0455
15 and 440.102.

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

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

18 (4) Crisis-stabilization units, as provided under
19 parts I and IV of chapter 394.

20 (5) Short-term residential treatment facilities, as
21 provided under parts I and IV of chapter 394.

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

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

26 (8) Hospitals, as provided under part I of chapter
27 395.

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

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

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

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

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

5 (28) Clinical laboratories, as provided under part I
6 of chapter 483.

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

9 (30) Organ and tissue procurement agencies, as
10 provided under chapter 765.

11 408.803 Definitions.--As used in this part, the term:

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

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

17 (3) "Authorizing statute" means the statute
18 authorizing the licensed operation of a provider listed in s.
19 408.802, including chapters 112, 383, 390, 394, 395, 400, 440,
20 483, and 765.

21 (4) "Certification" means certification as a Medicare
22 or Medicaid provider of the services that require licensure or
23 certification pursuant to the federal Clinical Laboratory
24 Improvement Amendment (CLIA).

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

1 cumulatively total 45 percent or greater. A change solely in
2 the management company or the board of directors is not a
3 change of ownership.

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

6 (7) "Controlling interest" means:

7 (a) The applicant or licensee;

8 (b) 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 applicant or licensee; or

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

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17 The term does not include a voluntary board member.

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

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

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

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

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

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

14 408.804 License required; display.--

15 (1) It is unlawful to provide services that require
16 licensure, or operate or maintain a provider that offers or
17 provides services that require licensure, without first
18 obtaining from the agency a license authorizing the provision
19 of such services or the operation or maintenance of such
20 provider.

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

28 408.805 Fees required; adjustments.--Unless otherwise
29 limited by authorizing statutes, license fees must be
30 reasonably calculated by the agency to cover its costs in
31 carrying out its responsibilities under this part, authorizing

1 statutes, and applicable rules, including the cost of
2 licensure, inspection, and the regulation of providers.

3 (1) Licensure fees shall be adjusted to provide for
4 biennial licensure under agency rules.

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

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

12 (4) An inspection fee must be paid as required in
13 authorizing statutes.

14 (5) Fees are nonrefundable.

15 (6) When a change is reported that requires issuance
16 of a license, a fee may be assessed. The fee must be based on
17 the actual cost of processing and issuing the license.

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

21 (8) Total fees collected may not exceed the cost of
22 administering this part, authorizing statutes, and applicable
23 rules.

24 408.806 License application process.--

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

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1 (a) The name, address, and social security number of
2 the applicant and each controlling interest if the applicant
3 or controlling interest is an individual.

4 (b) The name, address, and federal employer
5 identification number or taxpayer identification number of the
6 applicant and each controlling interest if the applicant or
7 controlling interest is not an individual.

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

9 (d) The total number of beds or capacity requested, as
10 applicable.

11 (e) The name of the person or persons under whose
12 management or supervision the provider will be operated and
13 the name of the administrator, if required.

14 (f) If the applicant offers continuing care agreements
15 as defined in chapter 651, proof that the applicant has
16 obtained a certificate of authority as required for operation
17 under chapter 651.

18 (g) Other information, including satisfactory
19 inspection results, which the agency finds necessary to
20 determine the ability of the applicant to carry out its
21 responsibilities under this part, authorizing statutes, and
22 applicable rules.

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

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

30 (c) For any other application or request, the
31 applicant must submit an application or request that must be

1 received by the agency at least 60 days before the requested
2 effective date, unless otherwise specified in authorizing
3 statutes or rules.

4 (d) The agency shall notify the licensee by mail or
5 electronically at least 90 days before the expiration of a
6 license that a renewal license is necessary to continue
7 operation. The failure to timely submit an application and
8 license fee shall result in a late fee charged to the licensee
9 by the agency in an amount equal to 50 percent of the
10 licensure fee; however, the aggregate amount of the fine may
11 not exceed \$5,000. If an application is received after the
12 required filing date and exhibits a hand-canceled postmark
13 obtained from a United States Post Office dated on or before
14 the required filing date, a fine may not be levied.

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 the
24 application shall be deemed incomplete and shall be withdrawn
25 from further consideration and the fees shall be 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 issued biennial licenses unless conditions of
30 the license category specify a shorter license period.

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1 (b) Each license issued must 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 void.

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

22 (b) An initial inspection is not required for
23 companion services or homemaker services providers, as
24 provided under part IV of chapter 400, or for health care
25 services pools, as provided under part XII of chapter 400.

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

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

3 (8) The agency may establish procedures for the
4 electronic notification and submission of required
5 information, including, but not limited to:

6 (a) Licensure applications.

7 (b) Required signatures.

8 (c) Payment of fees.

9 (d) Notarization of applications.

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

14 408.807 Change of ownership.--Whenever a change of
15 ownership occurs:

16 (1) The transferor shall notify the agency in writing
17 at least 60 days before the anticipated date of the change of
18 ownership.

19 (2) The transferee shall make application to the
20 agency for a license within the timeframes required in s.
21 408.806.

22 (3) The transferor shall be responsible and liable
23 for:

24 (a) The lawful operation of the provider and the
25 welfare of the clients served until the date the transferee is
26 licensed by the agency.

27 (b) Any and all penalties imposed against the
28 transferor for violations occurring before the date of change
29 of ownership.

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

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

7 (a) All client records.

8 (b) Inspection reports.

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

11 408.808 License categories.--

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

19 (2) PROVISIONAL LICENSE.--A provisional license may be
20 issued to an applicant pursuant to s. 408.809(3). An applicant
21 against whom a proceeding denying or revoking a license is
22 pending at the time of license renewal may be issued a
23 provisional license that is effective until final action but
24 is not subject to further appeal.

25 (3) INACTIVE LICENSE.--An inactive license may be
26 issued to a health care provider subject to the
27 certificate-of-need provisions in part I of this chapter when
28 the provider is currently licensed, does not have a
29 provisional license, and will be temporarily unable to provide
30 services but is reasonably expected to resume services within
31 12 months. Such designation may be made for a period not to

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

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

28 408.809 Background screening; prohibited offenses.--

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

3 (a) The licensee, if an individual.

4 (b) The administrator or a similarly titled person who
5 is responsible for the day-to-day operation of the provider.

6 (c) The financial officer or similarly titled
7 individual who is responsible for the financial operation of
8 the licensee or provider.

9 (d) Any person who is a controlling interest if the
10 agency has reason to believe that such person has been
11 convicted of any offense prohibited by s. 435.04. For each
12 controlling interest who has been convicted of any such
13 offense, the licensee shall submit to the agency a description
14 and explanation of the conviction at the time of license
15 application.

16 (2) Proof of compliance with level 2 screening
17 standards submitted within the previous 5 years to meet any
18 provider or professional licensure requirements of the agency,
19 the Department of Health, the Agency for Persons with
20 Disabilities, or the Department of Children and Family
21 Services satisfies the requirements of this section, if such
22 proof is accompanied, under penalty of perjury, by an
23 affidavit of compliance with the provisions of chapter 435
24 using forms provided by the agency. Proof of compliance with
25 the background screening requirements of the Department of
26 Financial Services submitted within the previous 5 years for
27 an applicant for a certificate of authority to operate a
28 continuing care retirement community under chapter 651
29 satisfies the Department of Law Enforcement and Federal Bureau
30 of Investigation portions of a level 2 background check.

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

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

29 (5) Background screening is not required in order to
30 obtain a certificate of exemption issued under s. 483.106.
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1 408.810 Minimum licensure requirements.--In addition
2 to the licensure requirements specified in this part,
3 authorizing statutes, and applicable rules, each applicant and
4 licensee must comply with the requirements of this section in
5 order to obtain and maintain a license.

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

8 (2) An applicant for licensure must provide a
9 description and explanation of any exclusions, suspensions, or
10 terminations of the applicant from the Medicare, Medicaid, or
11 federal Clinical Laboratory Improvement Amendment (CLIA)
12 programs.

13 (3) Unless otherwise specified in this part,
14 authorizing statutes, or applicable rules, any information
15 required to be reported to the agency must be submitted within
16 21 calendar days after the report period or effective date of
17 the information.

18 (4) Whenever a licensee discontinues operation of a
19 provider:

20 (a) The licensee must inform the agency not less than
21 30 days before discontinuance of operation and inform clients
22 as required by authorizing statutes. Immediately upon
23 discontinuance of operation of a provider, the licensee shall
24 surrender the license to the agency and the license shall be
25 canceled.

26 (b) The licensee shall remain responsible for
27 retaining and appropriately distributing all records within
28 the timeframes prescribed in authorizing statutes and
29 applicable rules. In addition, the licensee or, in the event
30 of death or dissolution of a licensee, the estate or agent of
31 the licensee shall:

1 1. Make arrangements to forward records for each
2 client to one of the following, based upon the client's
3 choice: the client or the client's legal representative, the
4 client's attending physician, or the health care provider
5 where the client currently receives services; or
6 2. Cause a notice to be published in the newspaper of
7 greatest general circulation in the county in which the
8 provider was located which advises clients of the
9 discontinuance of the provider operation. The notice must
10 inform clients that they may obtain copies of their records
11 and specify the name, address, and telephone number of the
12 person from whom the copies of records may be obtained. The
13 notice must appear at least once a week for 4 consecutive
14 weeks.
15 (5)(a) On or before the first day services are
16 provided to a client, a licensee must inform the client and
17 his or her immediate family or representative, if appropriate,
18 of the right to report:
19 1. Complaints. The statewide toll-free telephone
20 number for reporting complaints to the agency must be provided
21 to clients in a manner that is clearly legible and must
22 include the words: "To report a complaint regarding the
23 services you receive, please call toll-free (phone number)."
24 2. Abusive, neglectful, or exploitative practices. The
25 statewide toll-free telephone number for the central abuse
26 hotline must be provided to clients in a manner that is
27 clearly legible and must include the words: "To report abuse,
28 neglect, or exploitation, please call toll-free (phone
29 number)." The agency shall publish a minimum of a 90-day
30 advance notice of a change in the toll-free telephone numbers.
31

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

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

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

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

31

1 (9) A controlling interest may not withhold from the
2 agency any evidence of financial instability, including, but
3 not limited to, checks returned due to insufficient funds,
4 delinquent accounts, nonpayment of withholding taxes, unpaid
5 utility expenses, nonpayment for essential services, or
6 adverse court action concerning the financial viability of the
7 provider or any other provider licensed under this part which
8 is under the control of the controlling interest. Any person
9 who violates this subsection commits a misdemeanor of the
10 second degree, punishable as provided in s. 775.082 or s.
11 775.083. Each day of continuing violation is a separate
12 offense.

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

22 408.811 Right of inspection; copies; inspection
23 reports.--

24 (1) An authorized officer or employee of the agency
25 may make or cause to be made any inspection or investigation
26 deemed necessary by the agency to determine the state of
27 compliance with this part, authorizing statutes, and
28 applicable rules. The right of inspection extends to any
29 business that the agency has reason to believe is being
30 operated as a provider without a license, but inspection of
31 any business suspected of being operated without the

1 appropriate license may not be made without the permission of
2 the owner or person in charge unless a warrant is first
3 obtained from a circuit court. Any application for a license
4 issued under this part, authorizing statutes, or applicable
5 rules constitutes permission for an appropriate inspection to
6 verify the information submitted on or in connection with the
7 application.

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

10 (b) Inspections for relicensure shall be conducted
11 biennially unless otherwise specified by authorizing statutes
12 or applicable rules.

13 (2) Inspections conducted in conjunction with
14 certification may be accepted in lieu of a complete licensure
15 inspection. However, a licensure inspection may also be
16 conducted to review any licensure requirements that are not
17 also requirements for certification.

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

21 (4)(a) Each licensee shall maintain as public
22 information, available upon request, records of all inspection
23 reports pertaining to that provider which have been filed by
24 the agency unless those reports are exempt from or contain
25 information that is exempt from s. 119.07(1) and s. 24(a),
26 Art. I of the State Constitution or otherwise made
27 confidential by law. Effective October 1, 2006, copies of such
28 reports shall be retained in the records of the provider for
29 at least 3 years following the date the reports are filed and
30 issued, regardless of a change of ownership.

31

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

9 408.812 Unlicensed activity.--

10 (1) A person or entity may not offer or advertise
11 services that require licensure as defined by this part,
12 authorizing statutes, or applicable rules to the public
13 without obtaining a valid license from the agency. A
14 licenseholder may not advertise or hold out to the public that
15 he or she holds a license for other than that for which he or
16 she actually holds the license.

17 (2) The operation or maintenance of an unlicensed
18 provider or the performance of any services that require
19 licensure without proper licensure is a violation of this part
20 and authorizing statutes. Unlicensed activity constitutes harm
21 that materially affects the health, safety, and welfare of
22 clients. The agency or any state attorney may, in addition to
23 other remedies provided in this part, bring an action for an
24 injunction to restrain such violation or to enjoin the future
25 operation or maintenance of the unlicensed provider or the
26 performance of any services in violation of this part and
27 authorizing statutes, until compliance with this part,
28 authorizing statutes, and agency rules has been demonstrated
29 to the satisfaction of the agency.

30 (3) It is unlawful for any person or entity to own,
31 operate, or maintain an unlicensed provider. If, after

1 receiving notification from the agency, such person or entity
2 fails to cease operation and apply for a license under this
3 part and authorizing statutes, that person or entity is
4 subject to penalties as prescribed by authorizing statutes and
5 applicable rules. Each day of continued operation is a
6 separate offense.

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

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

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

26 (7) Any person who is aware of the operation of an
27 unlicensed provider must report that provider to the agency.

28 408.813 Administrative fines.--As a penalty for any
29 violation of this part, authorizing statutes, or applicable
30 rules, the agency may impose an administrative fine. Unless
31 the amount or aggregate limitation of the fine is prescribed

1 by authorizing statutes or applicable rules, the agency may
2 establish criteria by rule for the amount or aggregate
3 limitation of administrative fines applicable to this part,
4 authorizing statutes, and applicable rules. Each day of
5 violation constitutes a separate violation and is subject to a
6 separate fine. For fines that are imposed by final order of
7 the agency and that are not subject to further appeal, the
8 violator shall pay the fine plus interest at the rate
9 specified in s. 55.03 for each day beyond the date set by the
10 agency for payment of the fine.

11 408.814 Moratoriums; emergency suspensions.--

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

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

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

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

30 408.815 License or application denial; revocation.--
31

1 (1) In addition to the grounds provided in authorizing
2 statutes, grounds that may be used by the agency for denying
3 and revoking a license or change-of-ownership application
4 include any of the following actions by a controlling
5 interest:

6 (a) False representation of a material fact in the
7 license application or omission of any material fact from the
8 application.

9 (b) An intentional or negligent act materially
10 affecting the health or safety of a client of the provider.

11 (c) A violation of this part, authorizing statutes, or
12 applicable rules.

13 (d) A demonstrated pattern of deficient performance.

14 (e) The applicant, licensee, or controlling interest
15 has been or is currently excluded, suspended, terminated from
16 participation in the state Medicaid program, the Medicaid
17 program of any other state, or the Medicare program.

18 (2) If a licensee lawfully continues to operate while
19 a denial or revocation is pending in litigation, the licensee
20 must continue to meet all other requirements of this part,
21 authorizing statutes, and applicable rules and must file
22 subsequent renewal applications for licensure and pay all
23 licensure fees. The provisions of ss. 120.60(1) and
24 408.806(3)(c) do not apply to renewal applications filed
25 during the time period in which the litigation of the denial
26 or revocation is pending until that litigation is final.

27 (3) An action under s. 408.814 or denial of the
28 license of the transferor may be grounds for denial of a
29 change-of-ownership application of the transferee.

30 408.816 Injunctions.--
31

1 (1) In addition to the other powers provided by this
2 part, authorizing statutes, and applicable rules, the agency
3 may institute injunction proceedings in a court of competent
4 jurisdiction to:

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

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

20 (c) Terminate the operation of a provider when a
21 violation of any provision of this part, authorizing statutes,
22 or any rule adopted pursuant thereto exists which materially
23 affects the health, safety, or welfare of a client.

24
25 Such injunctive relief may be temporary or permanent.

26 (2) If action is necessary to protect clients of
27 providers from immediate, life-threatening situations, the
28 court may allow a temporary injunction without bond upon
29 proper proof being made. If it appears by competent evidence
30 or a sworn, substantiated affidavit that a temporary
31 injunction should be issued, the court, pending the

1 determination on final hearing, shall enjoin the operation of
2 the provider.

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

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

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

21 408.820 Exemptions.--Except as prescribed in
22 authorizing statutes, the following exemptions shall apply to
23 specified requirements of this part:

24 (1) Laboratories authorized to perform testing under
25 the Drug-Free Workplace Act, as provided under ss. 112.0455
26 and 440.102, are exempt from s. 408.810(5)-(10).

27 (2) Birth centers, as provided under chapter 383, are
28 exempt from s. 408.810(7)-(10).

29 (3) Abortion clinics, as provided under chapter 390,
30 are exempt from s. 408.810(7)-(10).

31

- 1 (4) Crisis-stabilization units, as provided under
2 parts I and IV of chapter 394, are exempt from s.
3 408.810(8)-(10).
- 4 (5) Short-term residential treatment facilities, as
5 provided under parts I and IV of chapter 394, are exempt from
6 s. 408.810(8)-(10).
- 7 (6) Residential treatment facilities, as provided
8 under part IV of chapter 394, are exempt from s.
9 408.810(8)-(10).
- 10 (7) Residential treatment centers for children and
11 adolescents, as provided under part IV of chapter 394, are
12 exempt from s. 408.810(8)-(10).
- 13 (8) Hospitals, as provided under part I of chapter
14 395, are exempt from s. 408.810(7)-(9).
- 15 (9) Ambulatory surgical centers, as provided under
16 part I of chapter 395, are exempt from s. 408.810(7)-(10).
- 17 (10) Mobile surgical facilities, as provided under
18 part I of chapter 395, are exempt from s. 408.810(7)-(10).
- 19 (11) Private review agents, as provided under part I
20 of chapter 395, are exempt from ss. 408.806(7), 408.810, and
21 408.811.
- 22 (12) Health care risk managers, as provided under part
23 I of chapter 395, are exempt from ss. 408.806(7), 408.810,
24 408.811.
- 25 (13) Nursing homes, as provided under part II of
26 chapter 400, are exempt from s. 408.810(7).
- 27 (14) Assisted living facilities, as provided under
28 part III of chapter 400, are exempt from s. 408.810(10).
- 29 (15) Home health agencies, as provided under part IV
30 of chapter 400, are exempt from s. 408.810(10).
31

- 1 (16) Nurse registries, as provided under part IV of
2 chapter 400, are exempt from s. 408.810(6)-(10).
- 3 (17) Companion services or homemaker services
4 providers, as provided under part IV of chapter 400, are
5 exempt from s. 408.810(6)-(10).
- 6 (18) Adult day care centers, as provided under part V
7 of chapter 400, are exempt from s. 408.810(10).
- 8 (19) Adult family-care homes, as provided under part
9 VII of chapter 400, are exempt from s. 408.810(7)-(10).
- 10 (20) Homes for special services, as provided under
11 part VIII of chapter 400, are exempt from s. 408.810(7)-(10).
- 12 (21) Transitional living facilities, as provided under
13 part VIII of chapter 400, are exempt from s. 408.810(7)-(10).
- 14 (22) Prescribed pediatric extended care centers, as
15 provided under part IX of chapter 400, are exempt from s.
16 408.810(10).
- 17 (23) Home medical equipment providers, as provided
18 under part X of chapter 400, are exempt from s. 408.810(10).
- 19 (24) Intermediate care facilities for persons with
20 developmental disabilities, as provided under part XI of
21 chapter 400, are exempt from s. 408.810(7).
- 22 (25) Health care services pools, as provided under
23 part XII of chapter 400, are exempt from s. 408.810(6)-(10).
- 24 (26) Health care clinics, as provided under part XIII
25 of chapter 400, are exempt from ss. 408.809 and 408.810(1),
26 (6), (7) and (10).
- 27 (27) Clinical laboratories, as provided under part I
28 of chapter 483, are exempt from s. 408.810(5)-(10).
- 29 (28) Multiphasic health testing centers, as provided
30 under part II of chapter 483, are exempt from s.
31 408.810(5)-(10).

1 (29) Organ and tissue procurement agencies, as
2 provided under chapter 765, are exempt from s.
3 408.810(5)-(10).

4 Section 6. Paragraph (b) of subsection (1) of section
5 400.801, Florida Statutes, is amended to read:

6 400.801 Homes for special services.--

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

8 (b) "Home for special services" means a site licensed
9 by the agency before January 1, 2006, where specialized health
10 care services are provided, including personal and custodial
11 care, but not continuous nursing services.

12 Section 7. Paragraph (i) of subsection (4) of section
13 400.9905, Florida Statutes, is amended to read:

14 400.9905 Definitions.--

15 (4) "Clinic" means an entity at which health care
16 services are provided to individuals and which tenders charges
17 for reimbursement for such services, including a mobile clinic
18 and a portable equipment provider. For purposes of this part,
19 the term does not include and the licensure requirements of
20 this part do not apply to:

21 (i) Entities that provide ~~only~~ oncology or radiation
22 therapy services by physicians licensed under chapter 458 or
23 chapter 459 which are owned by a corporation whose shares are
24 publicly traded on a registered stock exchange.

25 Section 8. Subsections (1) and (3) of section 408.831,
26 Florida Statutes, are amended to read:

27 408.831 Denial, suspension, or revocation of a
28 license, registration, certificate, or application.--

29 (1) In addition to any other remedies provided by law,
30 the agency may deny each application or suspend or revoke each
31

1 license, registration, or certificate of entities regulated or
2 licensed by it:

3 (a) If the applicant, licensee, or a licensee subject
4 to this part which shares a common controlling interest with
5 the applicant registrant, or certificateholder, or, in the
6 case of a corporation, partnership, or other business entity,
7 if any officer, director, agent, or managing employee of that
8 business entity or any affiliated person, partner, or
9 shareholder having an ownership interest equal to 5 percent or
10 greater in that business entity, has failed to pay all
11 outstanding fines, liens, or overpayments assessed by final
12 order of the agency or final order of the Centers for Medicare
13 and Medicaid Services, not subject to further appeal, unless a
14 repayment plan is approved by the agency; or

15 (b) For failure to comply with any repayment plan.

16 (3) This section provides standards of enforcement
17 applicable to all entities licensed or regulated by the Agency
18 for Health Care Administration. This section controls over any
19 conflicting provisions of chapters 39, ~~381~~, 383, 390, 391,
20 ~~393~~, 394, 395, 400, 408, 468, 483, and 765 ~~641~~ or rules
21 adopted pursuant to those chapters.

22 Section 9. In case of conflict between the provisions
23 of part II of chapter 408, Florida Statutes, and the
24 authorizing statutes governing the licensure of health care
25 providers by the Agency for Health Care Administration found
26 in s. 112.0455, chapter 383, chapter 390, chapter 394, chapter
27 395, chapter 400, chapter 440, chapter 483, and chapter 765,
28 Florida Statutes, the provisions of part II of chapter 408,
29 Florida Statutes, shall prevail.

30 Section 10. All provisions that apply to the entities
31 specified in s. 408.802, Florida Statutes, as created by this

1 act, in effect on October 1, 2006, which provides for annual
2 licensure fees are adjusted to provide for biennial licensure
3 fees with a corresponding doubling of the amount.

4 Section 11. The Legislature recognizes that there is a
5 need to conform the Florida Statutes to the policy decisions
6 reflected in this act and that there may be a need to resolve
7 apparent conflicts between authorizing statutes or any other
8 legislation that has been or may be enacted during 2006 and
9 the creation by this act of parts I, II, III, and IV of
10 chapter 408, Florida Statutes. Therefore, in the interim
11 between this act becoming a law and the 2007 Regular Session
12 of the Legislature or an earlier special session addressing
13 this issue, the Division of Statutory Revision shall provide
14 the relevant substantive committees of the Senate and the
15 House of Representatives with assistance, upon request, to
16 enable such committees to prepare draft legislation to conform
17 the Florida Statutes and any legislation enacted during 2006
18 to the provisions of this act.

19 Section 12. For the purpose of staggering license
20 expiration dates, the Agency for Health Care Administration
21 may issue a license for less than a 2-year period to those
22 providers making the transition from annual to biennial
23 licensure as authorized in this act. The agency shall charge a
24 prorated licensure fee for this shortened period. This
25 authority shall expire September 30, 2008.

26 Section 13. This act shall take effect October 1,
27 2006.

SENATE SUMMARY

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2
3 Creates part II of ch. 408, F.S., the "Health Care
4 Licensing Procedures Act." Provides uniform licensing
5 requirements and procedures for various health care
6 professionals and entities regulated by the Agency for
7 Health Care Administration. Provides for establishing
8 license fees. Provides requirements for inspections by
9 the agency. Provides requirements for background
10 screening. Provides procedures for discontinuing
11 operation of a facility and for transferring a license.
12 Specifies conditions under which the agency may impose a
13 moratorium or suspend the operations of a provider.
14 Authorizes the agency to institute injunction
15 proceedings. Requires that licensing fees be deposited
16 into the Health Care Trust Fund. Provides for part II of
17 ch. 408, F.S., to prevail in case of a conflict with
18 other licensing provisions. (See bill for details.)
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