

1
2 An act relating to the licensure of health care
3 providers regulated by the Agency for Health
4 Care Administration; amending s. 112.0455,
5 F.S.; providing applicability of licensure
6 requirements under pt. II of ch. 408, F.S., to
7 drug-testing standards of laboratories;
8 authorizing the Agency for Health Care
9 Administration to adopt rules to implement pt.
10 II of ch. 408, F.S., relating to the Drug-Free
11 Workplace Act; revising a license fee; amending
12 s. 381.78, F.S.; conforming a cross-reference;
13 amending s. 383.301, F.S.; providing
14 applicability of licensure requirements under
15 pt. II of ch. 408, F.S., to birth centers;
16 repealing s. 383.304, F.S., relating to the
17 licensure requirement for birth centers;
18 amending s. 383.305, F.S.; providing
19 applicability of licensure requirements under
20 pt. II of ch. 408, F.S., to birth centers;
21 providing for licensure fees to be established
22 by rule; amending s. 383.309, F.S.; authorizing
23 the agency to adopt and enforce rules to
24 administer pt. II of ch. 408, F.S., relating to
25 standards for birth centers; amending s.
26 383.315, F.S.; revising a provision relating to
27 consultation agreements for birth centers;
28 amending s. 383.324, F.S.; revising provisions
29 relating to inspections and investigations of
30 birth center facilities; amending s. 383.33,
31 F.S.; revising provisions relating to

1 administrative fines, penalties, emergency
2 orders, and moratoriums on admissions;
3 repealing s. 383.331, F.S., relating to
4 injunctive relief; amending s. 383.332, F.S.;
5 providing applicability of licensure
6 requirements under pt. II of ch. 408, F.S.;
7 amending s. 383.335, F.S.; providing an
8 exemption from pt. II of ch. 408, F.S., for
9 specified birth centers; amending s. 383.50,
10 F.S.; conforming a cross-reference; amending s.
11 390.011, F.S.; revising a definition; amending
12 s. 390.012, F.S.; revising rulemaking authority
13 of the agency for abortion clinics; repealing
14 s. 390.013, F.S., relating to effective date of
15 rules applicable to abortion clinics; amending
16 s. 390.014, F.S.; providing applicability of
17 licensure requirements under pt. II of ch. 408,
18 F.S., to abortion clinics; amending s. 390.015,
19 F.S.; revising provisions to applications for a
20 license; repealing s. 390.016, F.S., relating
21 to expiration and renewal of a license;
22 repealing s. 390.017, F.S., relating to grounds
23 for suspension or revocation of a license;
24 amending s. 390.018, F.S.; providing
25 applicability of licensure requirements under
26 pt. II of ch. 408, F.S., to administrative
27 fines; repealing s. 390.019, F.S., relating an
28 to administrative penalty in lieu of revocation
29 or suspension of a license to operate an
30 abortion clinic; repealing s. 390.021, F.S.,
31 relating to instituting injunction proceedings

1 against an abortion clinic; amending s.
2 394.455, F.S.; revising a definition; amending
3 s. 394.4787, F.S.; conforming a
4 cross-reference; amending s. 394.67, F.S.;
5 deleting, revising, and providing definitions;
6 amending ss. 394.74 and 394.82, F.S.;
7 conforming cross-references; amending s.
8 394.875, F.S.; providing the purpose of
9 short-term residential treatment facilities;
10 providing applicability of licensure
11 requirements under pt. II of ch. 408, F.S., to
12 crisis stabilization units, short-term
13 residential treatment facilities, residential
14 treatment facilities, and residential treatment
15 centers for children and adolescents; providing
16 an exemption from licensure requirements for
17 hospitals licensed under ch. 395, F.S., and
18 certain programs operated therein; amending s.
19 394.876, F.S.; revising provisions relating to
20 an application for licensure to provide
21 community substance abuse and mental health
22 services; amending s. 394.877, F.S.; providing
23 applicability of pt. II of ch. 408, F.S., to
24 license fees; repealing s. 394.878, F.S.,
25 relating to issuance and renewal of licenses;
26 amending s. 394.879, F.S.; providing rulemaking
27 authority to the Department of Children and
28 Family Services; deleting a reference to
29 deposit of certain fines in the Mental Health
30 Facility Trust Fund; amending s. 394.90, F.S.;
31 revising provisions relating to inspections of

1 crisis stabilization units and residential
2 treatment facilities; amending s. 394.902,
3 F.S.; revising provisions relating to the
4 moratorium on admissions for unsafe or unlawful
5 provision of community substance abuse and
6 mental health services; amending s. 394.907,
7 F.S., relating to access to records of
8 community mental health centers; providing for
9 the department to determine licensee compliance
10 with quality assurance programs; amending s.
11 395.002, F.S.; deleting a definition;
12 conforming cross-references; amending ss.
13 395.003, 395.004, and 395.0161, F.S.; providing
14 applicability of licensure requirements under
15 pt. II of ch. 408, F.S., to hospitals,
16 ambulatory surgical centers, and mobile
17 surgical facilities; repealing s. 395.0055,
18 F.S., relating to background screening of
19 personnel of hospitals and other licensed
20 facilities; amending s. 395.0163, F.S.;
21 deleting a provision requiring the deposit of
22 fees charged for review of plans for
23 construction of hospitals and other licensed
24 facilities in the Planning and Regulation Trust
25 Fund; amending ss. 395.0193 and 395.0197, F.S.;
26 providing for the applicability of the
27 reporting requirements of pt. II of ch. 408,
28 F.S., to hospitals and other licensed
29 facilities; conforming cross-references;
30 amending ss. 395.0199 and 395.1046, F.S.;
31 providing applicability of licensure

1 requirements under pt. II of ch. 408, F.S., to
2 health care utilization review and complaint
3 investigation procedures; amending s. 395.1055,
4 F.S.; providing applicability of licensure
5 requirements under pt. II of ch. 408, F.S., to
6 the adoption and enforcement of rules; amending
7 ss. 395.1065, 395.10973, and 395.10974, F.S.;
8 providing applicability of licensure
9 requirements under pt. II of ch. 408, F.S., to
10 administrative penalties and injunctions,
11 rulemaking, and health care risk managers;
12 amending ss. 395.602, 395.701, 400.0073, and
13 400.0074, F.S.; conforming cross-references;
14 amending s. 400.021, F.S.; deleting
15 definitions; amending s. 400.022, F.S.;
16 providing applicability of licensure
17 requirements under pt. II of ch. 408, F.S., to
18 grounds for action for a violation of
19 residents' rights; amending s. 400.051, F.S.;
20 conforming a cross-reference; amending s.
21 400.062, F.S.; providing applicability of
22 licensure requirements under pt. II of ch. 408,
23 F.S., to nursing homes and related health care
24 facilities; revising provisions relating to
25 license fees; amending s. 400.063, F.S.;
26 conforming a cross-reference; amending ss.
27 400.071 and 400.0712, F.S.; providing
28 applicability of licensure requirements under
29 pt. II of ch. 408, F.S., to license
30 applications; revising provisions governing
31 inactive licenses; amending s. 400.102, F.S.;

1 providing applicability of licensure
2 requirements under pt. II of ch. 408, F.S., to
3 grounds for action by the agency against a
4 licensee; amending s. 400.111, F.S.; providing
5 applicability of licensure requirements under
6 pt. II of ch. 408, F.S., to the disclosure of a
7 controlling interest of a nursing home
8 facility; requiring a licensee to disclose
9 certain holdings of a controlling interest;
10 amending s. 400.1183, F.S.; revising grievance
11 procedures for nursing home residents; deleting
12 a provision relating to an administrative fine;
13 amending s. 400.121, F.S.; providing
14 applicability of licensure requirements under
15 pt. II of ch. 408, F.S., to the denial,
16 suspension, or revocation of a nursing home
17 facility license, fines imposed, and procedures
18 for conducting hearings; repealing s. 400.125,
19 F.S., relating to instituting injunction
20 proceedings against a nursing home; amending s.
21 400.141, F.S.; conforming a cross-reference;
22 amending s. 400.179, F.S.; revising provisions
23 relating to liability for Medicaid
24 underpayments and overpayments; requiring that
25 certain licensure fees be paid annually;
26 amending s. 400.18, F.S.; revising provisions
27 relating to the closing of a nursing home
28 facility; amending s. 400.19, F.S.; providing
29 applicability of licensure requirements under
30 pt. II of ch. 408, F.S., to nursing home
31 facility inspections; amending s. 400.191,

1 F.S.; revising provisions relating to the
2 availability, distribution, and posting of
3 reports and records; amending s. 400.23, F.S.;
4 providing applicability of pt. II of ch. 408,
5 F.S., to rulemaking for nursing home
6 facilities; amending s. 400.241, F.S.; deleting
7 provisions relating to prohibited acts
8 involving the establishment, operation, or
9 advertisement of nursing home facilities;
10 amending ss. 400.464, 400.471, 400.474, and
11 400.484, F.S.; providing applicability of
12 licensure requirements under pt. II of ch. 408,
13 F.S., to home health agencies; repealing s.
14 400.495, F.S., relating to the notice of a
15 toll-free telephone number for the central
16 abuse hotline; amending ss. 400.497, 400.506,
17 400.509, 400.602, 400.605, 400.606, 400.6065,
18 400.607, 400.801, 400.805, 400.903, 400.905,
19 400.907, 400.908, 400.912, 400.914, and
20 400.915, F.S.; providing applicability of
21 licensure requirements under pt. II of ch. 408,
22 F.S., to the toll-free central abuse hotline,
23 rules establishing minimum standards for home
24 health aides, nurse registries, the
25 registration of companion or homemaker service
26 providers that are exempt from licensure,
27 hospices, homes for special services,
28 transitional living facilities, and prescribed
29 pediatric extended care (PPEC) centers;
30 amending s. 400.512, F.S.; revising provisions
31 relating to the screening of home health

1 agency, nurse registry, companion, and
2 homemaker personnel; repealing s. 400.515,
3 F.S., relating to instituting injunction
4 proceedings against a home health agency or
5 nurse registry; amending s. 400.6095, F.S.;
6 clarifying provisions relating to protection
7 from liability for hospice staff; amending s.
8 400.902, F.S.; revising a definition; amending
9 s. 400.906, F.S.; revising provisions relating
10 to applications for a license to operate a PPEC
11 center; repealing s. 400.910, F.S., relating to
12 expiration and renewal of a license and the
13 issuance of a conditional license or permit to
14 operate a PPEC center; repealing s. 400.911,
15 F.S., relating to instituting injunction
16 proceedings against a PPEC center; repealing s.
17 400.913, F.S., relating to right to enter and
18 inspect a PPEC center; amending s. 400.916,
19 F.S.; revising provisions relating to
20 prohibited acts and penalties applicable to a
21 PPEC center; repealing s. 400.917, F.S.,
22 relating to disposition of moneys from fines
23 and fees imposed on a PPEC center; amending s.
24 400.925, F.S.; deleting and revising
25 definitions; amending ss. 400.93, 400.931,
26 400.932, 400.933, 400.935, and 400.955, F.S.;
27 providing applicability of licensure
28 requirements under pt. II of ch. 408, F.S., to
29 home medical equipment providers; repealing s.
30 400.95, F.S., relating to notice of the
31 toll-free telephone number for the central

1 | abuse hotline; repealing s. 400.956, F.S.,
2 | relating to instituting injunction proceedings
3 | against a home medical equipment provider;
4 | amending ss. 400.962, 400.967, 400.968, and
5 | 400.969, F.S.; providing applicability of
6 | licensure requirements under pt. II of ch. 408,
7 | F.S., to intermediate care facilities for
8 | developmentally disabled persons; repealing s.
9 | 400.963, F.S., relating to instituting
10 | injunction proceedings against an intermediate
11 | care facility for developmentally disabled
12 | persons; repealing s. 400.965, F.S., relating
13 | to agency action against an intermediate care
14 | facility for developmentally disabled persons;
15 | amending s. 400.980, F.S.; providing
16 | applicability of licensure requirements under
17 | pt. II of ch. 408, F.S., to health care
18 | services pools; amending s. 400.9905, F.S.;
19 | revising the definition of the term "clinic"
20 | for purposes of pt. X of ch. 400, F.S.,
21 | relating to clinic licensure; amending ss.
22 | 400.991, 400.9915, 400.9925, 400.993, 400.9935,
23 | and 400.995, F.S.; providing applicability of
24 | licensure requirements under pt. II of ch. 408,
25 | F.S., to health care clinics; repealing s.
26 | 400.992, F.S., relating to license renewal,
27 | transfer of ownership, and provisional license
28 | of a health care clinic; repealing s. 400.994,
29 | F.S., relating to instituting injunctive
30 | proceedings against a health care clinic;
31 | repealing s. 400.9945, F.S., relating to review

1 of agency licensure enforcement actions;
2 amending ss. 408.802 and 408.832, F.S.;
3 revising provisions to conform to changes made
4 by the act; amending ss. 409.221, 409.815,
5 409.905, and 409.907, F.S.; conforming
6 cross-references; amending ss. 429.02, 429.07,
7 429.075, 429.08, 429.11, 429.12, 429.14,
8 429.17, 429.174, 429.176, 429.18, 429.19,
9 429.22, 429.26, 429.31, 429.34, 429.35, 429.41,
10 and 429.47, F.S.; providing applicability of
11 licensure requirements under pt. II of ch. 408,
12 F.S., to assisted living facilities; repealing
13 s. 429.15, F.S., relating to imposing a
14 moratorium on admissions to an assisted living
15 facility and notice thereof; repealing s.
16 429.21, F.S., relating to instituting
17 injunctive proceedings against an assisted
18 living facility; repealing s. 429.51, F.S.,
19 relating to the time for an existing assisted
20 living facility to comply with newly adopted
21 rules and standards; amending ss. 429.67,
22 429.69, 429.71, and 429.73, F.S.; providing
23 applicability of licensure requirements under
24 pt. II of ch. 408, F.S., to adult family-care
25 homes; repealing s. 429.77, F.S., relating to
26 instituting injunctive proceedings against an
27 adult family-care home; amending ss. 429.901,
28 429.907, 429.909, 429.911, 429.913, 429.915,
29 429.919, 429.925, 429.927, and 429.929, F.S.;
30 providing applicability of licensure
31 requirements under pt. II of ch. 408, F.S., to

1 adult day care centers; repealing s. 429.921,
2 F.S., relating to the disposition of fees and
3 administrative fines imposed on adult day care
4 centers; repealing s. 429.923, F.S., relating
5 to instituting injunctive proceedings against
6 an adult day care center; repealing s. 429.933,
7 F.S., relating to prohibited acts and penalties
8 applicable to adult day care centers; amending
9 s. 440.102, F.S.; providing applicability of
10 licensure requirements under pt. II of ch. 408,
11 F.S., to drug-testing laboratories; amending
12 ss. 468.505 and 483.106, F.S.; conforming
13 cross-references; amending ss. 483.035,
14 483.051, 483.061, 483.091, 483.101, 483.111,
15 483.172, 483.201, and 483.221, F.S.; providing
16 applicability of licensure requirements under
17 pt. II of ch. 408, F.S., to certain clinical
18 laboratories; repealing s. 483.131, F.S.,
19 relating to display of the clinical laboratory
20 license; repealing s. 483.25, F.S., relating to
21 instituting injunctive proceedings against a
22 clinical laboratory; amending ss. 483.291,
23 483.294, 483.30, 483.302, 483.317, 483.32, and
24 483.322, F.S.; providing applicability of
25 licensure requirements under pt. II of ch. 408,
26 F.S., to multiphasic health testing centers;
27 repealing s. 483.311, F.S., relating to the
28 display of a multiphasic health testing center
29 license; amending s. 483.317, F.S.; repealing
30 s. 483.328, F.S., relating to instituting
31 injunctive proceedings against a multiphasic

1 health testing center; amending s. 765.541,
2 F.S.; conforming provisions relating to
3 cadaveric organ and tissue procurement;
4 amending s. 765.542, F.S.; providing
5 applicability of licensure requirements under
6 pt. II of ch. 408, F.S., to organ procurement
7 organizations and tissue and eye banks;
8 amending s. 765.544, F.S.; conforming
9 provisions relating to application fees from
10 organizations and tissue and eye banks;
11 amending ss. 766.118, 766.316, and 812.014,
12 F.S.; conforming cross-references; providing an
13 effective date.

14

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

16

17 Section 1. Subsections (12) and (17) and paragraph (a)
18 of subsection (13) of section 112.0455, Florida Statutes, are
19 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 require licensure pursuant
24 to this section and part II of chapter 408 and to entities
25 licensed by or applying for such licensure from the Agency for
26 Health Care Administration pursuant to this section. A license
27 issued by the agency is required in order to operate a
28 laboratory.

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

31

1 1. The laboratory is licensed and approved by the
2 Agency for Health Care Administration using criteria
3 established by the United States Department of Health and
4 Human Services as general guidelines for modeling the state
5 drug testing program and in accordance with part II of chapter
6 408. Each applicant for licensure and licensee must comply
7 with all requirements of part II of chapter 408. ~~the following~~
8 ~~requirements:~~

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

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

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

30 d. ~~A provisional license may be granted to an~~
31 ~~applicant when each individual required by this section to~~

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

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

28 ~~f. Each applicant must submit to the agency a~~
29 ~~description and explanation of any conviction of an offense~~
30 ~~prohibited under the level 2 standards of chapter 435 by a~~
31 ~~member of the board of directors of the applicant, its~~

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

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

22 ~~h. The agency may deny or revoke licensure if the~~
23 ~~applicant:~~

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

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

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

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

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

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

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

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

17 d. Other necessary and proper actions taken to ensure
18 reliable and accurate drug test results.

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

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

26 2. Positive results on confirmation tests only, or
27 negative results, as applicable.

28 3. A list of the drugs for which the drug analyses
29 were conducted.

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

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 and
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 shall be not 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~~
10 ~~follows: For licensure as a drug testing laboratory, an~~
11 ~~annual fee of not less than \$8,000 or more than \$10,000 per~~
12 ~~fiscal year; for late filing of an application for renewal, an~~
13 ~~additional fee of \$500 per day shall be charged.~~

14 Section 2. Paragraph (b) of subsection (4) of section
15 381.78, Florida Statutes, is amended to read:

16 381.78 Advisory council on brain and spinal cord
17 injuries.--

18 (4) The council shall:

19 (b) Annually appoint a five-member committee composed
20 of one individual who has a brain injury or has a family
21 member with a brain injury, one individual who has a spinal
22 cord injury or has a family member with a spinal cord injury,
23 and three members who shall be chosen from among these
24 representative groups: physicians, other allied health
25 professionals, administrators of brain and spinal cord injury
26 programs, and representatives from support groups with
27 expertise in areas related to the rehabilitation of
28 individuals who have brain or spinal cord injuries, except
29 that one and only one member of the committee shall be an
30 administrator of a transitional living facility. Membership on
31

1 the council is not a prerequisite for membership on this
2 committee.

3 1. The committee shall perform onsite visits to those
4 transitional living facilities identified by the Agency for
5 Health Care Administration as being in possible violation of
6 the statutes and rules regulating such facilities. The
7 committee members have the same rights of entry and inspection
8 granted under s. 400.805(4) ~~s. 400.805(8)~~ to designated
9 representatives of the agency.

10 2. Factual findings of the committee resulting from an
11 onsite investigation of a facility pursuant to subparagraph 1.
12 shall be adopted by the agency in developing its
13 administrative response regarding enforcement of statutes and
14 rules regulating the operation of the facility.

15 3. Onsite investigations by the committee shall be
16 funded by the Health Care Trust Fund.

17 4. Travel expenses for committee members shall be
18 reimbursed in accordance with s. 112.061.

19 5. Members of the committee shall recuse themselves
20 from participating in any investigation that would create a
21 conflict of interest under state law, and the council shall
22 replace the member, either temporarily or permanently.

23 Section 3. Section 383.301, Florida Statutes, is
24 amended to read:

25 383.301 Licensure and regulation of birth centers;
26 legislative intent.--It is the intent of the Legislature to
27 provide for the protection of public health and safety in the
28 establishment, maintenance, and operation of birth centers by
29 providing for licensure of birth centers and for the
30 development, establishment, and enforcement of minimum
31 standards with respect to birth centers. The requirements of

1 part II of chapter 408 shall apply to the provision of
2 services that require licensure pursuant to ss. 383.30-383.335
3 and part II of chapter 408 and to entities licensed by or
4 applying for such licensure from the Agency for Health Care
5 Administration pursuant to ss. 383.30-383.335. A license
6 issued by the agency is required in order to operate a birth
7 center in this state.

8 Section 4. Section 383.304, Florida Statutes, is
9 repealed.

10 Section 5. Section 383.305, Florida Statutes, is
11 amended to read:

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

14 (1)(a) In accordance with s. 408.805, an applicant or
15 a licensee shall pay a fee for each license application
16 submitted under ss. 383.30-383.335 and part II of chapter 408.
17 The amount of the fee shall be established by rule. Upon
18 receipt of an application for a license and the license fee,
19 the agency shall issue a license if the applicant and facility
20 have received all approvals required by law and meet the
21 requirements established under ss. 383.30 383.335 and by rules
22 promulgated hereunder.

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

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

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

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

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

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

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

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

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

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

3 ~~(2)(7)~~ Each applicant for licensure and each licensee
4 must comply with the following requirements of this chapter
5 and part II of chapter 408.+

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

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

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

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

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

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

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

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

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

19 ~~(h) The agency may deny or revoke licensure if the~~
20 ~~applicant:~~

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

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

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

30 Section 6. Section 383.309, Florida Statutes, is
31 amended to read:

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

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

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

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

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

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

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

1 Florida Building Code and the Florida Fire Prevention Code
2 which govern birth centers. In addition, the agency may
3 enforce the special-occupancy provisions of the Florida
4 Building Code and the Florida Fire Prevention Code which apply
5 to birth centers in conducting any inspection authorized under
6 this chapter or part II of chapter 408.

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

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

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

15 Section 8. Section 383.324, Florida Statutes, is
16 amended to read:

17 383.324 Inspections and investigations; inspection
18 fees.--

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

21 ~~(2) Each facility licensed under s. 383.305 shall pay~~
22 ~~to the agency, at the time of inspection, an inspection fee~~
23 ~~established by rule of the agency. In addition to the~~
24 ~~requirements of part II of chapter 408,~~

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

29 Section 9. Section 383.33, Florida Statutes, is
30 amended to read:

31

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

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

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

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

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

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

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

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

1 ~~(2)(3)~~ In accordance with part II of chapter 408, the
2 agency may impose an immediate moratorium on elective
3 admissions to any licensed facility, building or portion
4 thereof, or service when the agency determines that any
5 condition in the facility presents a threat to the public
6 health or safety.

7 Section 10. Section 383.331, Florida Statutes, is
8 repealed.

9 Section 11. Section 383.332, Florida Statutes, is
10 amended to read:

11 383.332 Establishing, managing, or operating a birth
12 center without a license; penalty.--Any person who
13 establishes, conducts, manages, or operates any birth center
14 facility without a license issued under s. 383.305 and part II
15 of chapter 408 commits ~~is guilty of~~ a misdemeanor and, upon
16 conviction, shall be fined not more than \$100 for the first
17 offense and not more than \$500 for each subsequent offense;
18 and each day of continuing violation after conviction shall be
19 considered a separate offense.

20 Section 12. Subsection (1) of section 383.335, Florida
21 Statutes, is amended to read:

22 383.335 Partial exemptions.--

23 (1) Any facility that ~~which~~ was providing obstetrical
24 and gynecological surgical services and was owned and operated
25 by a board-certified obstetrician on June 15, 1984, and that
26 would ~~which is~~ otherwise be subject to licensure under ss.
27 383.30-383.335 as a birth center, is exempt from the
28 provisions of ss. 383.30-383.335 and part II of chapter 408
29 which restrict the provision of surgical services and outlet
30 forceps delivery and the administration of anesthesia at birth
31 centers. The agency shall adopt rules specifically related to

1 the performance of such services and the administration of
2 anesthesia at such facilities.

3 Section 13. Subsection (4) of section 383.50, Florida
4 Statutes, is amended to read:

5 383.50 Treatment of abandoned newborn infant.--

6 (4) Each hospital of this state subject to s. 395.1041
7 shall, and any other hospital may, admit and provide all
8 necessary emergency services and care, as defined in s.
9 395.002(9)(10), to any newborn infant left with the hospital
10 in accordance with this section. The hospital or any of its
11 licensed health care professionals shall consider these
12 actions as implied consent for treatment, and a hospital
13 accepting physical custody of a newborn infant has implied
14 consent to perform all necessary emergency services and care.
15 The hospital or any of its licensed health care professionals
16 is immune from criminal or civil liability for acting in good
17 faith in accordance with this section. Nothing in this
18 subsection limits liability for negligence.

19 Section 14. Subsection (5) of section 390.011, Florida
20 Statutes, is amended to read:

21 390.011 Definitions.--As used in this chapter, the
22 term:

23 (5) "Hospital" means a facility as defined in s.
24 395.002(12) and licensed under chapter 395 and part II of
25 chapter 408.

26 Section 15. Subsection (1) of section 390.012, Florida
27 Statutes, is amended to read:

28 390.012 Powers of agency; rules; disposal of fetal
29 remains.--

30 (1) The agency may ~~shall have the authority to~~ develop
31 and enforce rules pursuant to ss. 390.001-390.018 and part II

1 of chapter 408 for the health, care, and treatment of persons
2 in abortion clinics and for the safe operation of such
3 clinics.

4 (a) The rules shall be reasonably related to the
5 preservation of maternal health of the clients.

6 (b) The rules shall be in accordance with s. 797.03
7 and may not impose an unconstitutional burden on a woman's
8 freedom to decide whether to terminate her pregnancy.

9 (c) The rules shall provide for:

10 1. The performance of pregnancy termination procedures
11 only by a licensed physician.

12 2. The making, protection, and preservation of patient
13 records, which shall be treated as medical records under
14 chapter 458.

15 Section 16. Section 390.013, Florida Statutes, is
16 repealed.

17 Section 17. Section 390.014, Florida Statutes, is
18 amended to read:

19 390.014 Licenses; fees, ~~display, etc.--~~

20 (1) The requirements of part II of chapter 408 shall
21 apply to the provision of services that require licensure
22 pursuant to ss. 390.011-390.018 and part II of chapter 408 and
23 to entities licensed by or applying for such licensure from
24 the Agency for Health Care Administration pursuant to ss.
25 390.011-390.018. A license issued by the agency is required in
26 order to operate a clinic in this state. ~~No abortion clinic~~
27 ~~shall operate in this state without a currently effective~~
28 ~~license issued by the agency.~~

29 (2) A separate license shall be required for each
30 clinic maintained on separate premises, even though it is
31 operated by the same management as another clinic; but a

1 separate license shall not be required for separate buildings
2 on the same premises.

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

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

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

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

21 Section 18. Section 390.015, Florida Statutes, is
22 amended to read:

23 390.015 Application for license.--

24 ~~(1)~~ In addition to the requirements of part II of
25 chapter 408, an application for a license to operate an
26 abortion clinic shall be made to the agency and must include
27 ~~on a form furnished by it for that purpose. The application~~
28 ~~shall be accompanied by the applicable license fee.~~

29 ~~(2) The application, which shall be made under oath,~~
30 ~~shall contain, among other things, the following:~~

31

1 ~~(a) The name and address of the applicant if the~~
2 ~~applicant is an individual; or if the applicant is a firm,~~
3 ~~partnership, or association, the name and address of each~~
4 ~~member thereof; or if the applicant is a corporation, its name~~
5 ~~and address and the name and address of each of its officers.~~

6 ~~(b) The name by which the clinic is to be known.~~

7 ~~(c) the location of the clinic for which application~~
8 ~~is made and a statement that local zoning ordinances permit~~
9 ~~such location.~~

10 ~~(d) The name of the person or persons under whose~~
11 ~~management or supervision the clinic will be operated.~~

12 ~~(3) 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 employee, or other similarly~~
18 ~~titled individual who is responsible for the daily operation~~
19 ~~of the clinic, and financial officer, or other similarly~~
20 ~~titled individual who is responsible for the financial~~
21 ~~operation of the clinic, including billings for patient care~~
22 ~~and services. The applicant must comply with the procedures~~
23 ~~for level 2 background screening as set forth in chapter 435,~~
24 ~~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 standard license may be granted to the applicant~~
13 ~~upon the agency's receipt of a report of the results of the~~
14 ~~Federal 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 shall 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 Section 19. Section 390.016, Florida Statutes, is
9 repealed.

10 Section 20. Section 390.017, Florida Statutes, is
11 repealed.

12 Section 21. Section 390.018, Florida Statutes, is
13 amended to read:

14 390.018 Administrative fine ~~penalty in lieu of~~
15 ~~revocation or suspension.~~ --In addition to the requirements of
16 part II of chapter 408 ~~If the agency finds that one or more~~
17 ~~grounds exist for the revocation or suspension of a license~~
18 ~~issued to an abortion clinic, the agency may, in lieu of such~~
19 ~~suspension or revocation,~~ impose a fine upon the clinic in an
20 amount not to exceed \$1,000 for each violation of any
21 provision of this part, part II of chapter 408, or applicable
22 rules. ~~The fine shall be paid to the agency within 60 days~~
23 ~~from the date of entry of the administrative order. If the~~
24 ~~licensee fails to pay the fine in its entirety to the agency~~
25 ~~within the period allowed, the license of the licensee shall~~
26 ~~stand suspended, revoked, or renewal or continuation may be~~
27 ~~refused, as the case may be, upon expiration of such period~~
28 ~~and without any further administrative or judicial~~
29 ~~proceedings.~~

30 Section 22. Section 390.019, Florida Statutes, is
31 repealed.

1 Section 23. Section 390.021, Florida Statutes, is
2 repealed.

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

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

7 (13) "Hospital" means a facility as defined in s.
8 395.002 and licensed under chapter 395 and part II of chapter
9 408.

10 Section 25. Subsection (7) of section 394.4787,
11 Florida Statutes, is amended to read:

12 394.4787 Definitions; ss. 394.4786, 394.4787,
13 394.4788, and 394.4789.--As used in this section and ss.
14 394.4786, 394.4788, and 394.4789:

15 (7) "Specialty psychiatric hospital" means a hospital
16 licensed by the agency pursuant to s. 395.002(28) and part II
17 of chapter 408 ~~s. 395.002(29)~~ as a specialty psychiatric
18 hospital.

19 Section 26. Subsections (3) through (25) of section
20 394.67, Florida Statutes, are renumbered as subsections (2)
21 through (24), respectively, and present subsections (2) and
22 (4) of that section are amended to read:

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

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

29 ~~(3)(4)~~ "Crisis services" means short-term evaluation,
30 stabilization, and brief intervention services provided to a
31 person who is experiencing an acute mental or emotional

1 crisis, as defined in subsection~~(17)~~~~(18)~~, or an acute
2 substance abuse crisis, as defined in subsection~~(18)~~~~(19)~~, to
3 prevent further deterioration of the person's mental health.
4 Crisis services are provided in settings such as a crisis
5 stabilization unit, an inpatient unit, a short-term
6 residential treatment program, a detoxification facility, or
7 an addictions receiving facility; at the site of the crisis by
8 a mobile crisis response team; or at a hospital on an
9 outpatient basis.

10 Section 27. Subsection (3) of section 394.74, Florida
11 Statutes, is amended to read:

12 394.74 Contracts for provision of local substance
13 abuse and mental health programs.--

14 (3) Contracts shall include, but are not limited to:

15 (a) A provision that, within the limits of available
16 resources, substance abuse and mental health crisis services,
17 as defined in s. 394.67~~(3)~~~~(4)~~, shall be available to any
18 individual residing or employed within the service area,
19 regardless of ability to pay for such services, current or
20 past health condition, or any other factor;

21 (b) A provision that such services be available with
22 priority of attention being given to individuals who exhibit
23 symptoms of chronic or acute substance abuse or mental illness
24 and who are unable to pay the cost of receiving such services;

25 (c) A provision that every reasonable effort to
26 collect appropriate reimbursement for the cost of providing
27 substance abuse and mental health services to persons able to
28 pay for services, including first-party payments and
29 third-party payments, shall be made by facilities providing
30 services pursuant to this act;

31

1 (d) A program description and line-item operating
2 budget by program service component for substance abuse and
3 mental health services, provided the entire proposed operating
4 budget for the service provider will be displayed;

5 (e) A provision that client demographic, service, and
6 outcome information required for the department's Mental
7 Health and Substance Abuse Data System be submitted to the
8 department by a date specified in the contract. The department
9 may not pay the provider unless the required information has
10 been submitted by the specified date; and

11 (f) A requirement that the contractor must conform to
12 department rules and the priorities established thereunder.

13 Section 28. Subsections (1) and (4) of section 394.82,
14 Florida Statutes, are amended to read:

15 394.82 Funding of expanded services.--

16 (1) Pursuant to the General Appropriations Acts for
17 the 2001-2002 and 2002-2003 fiscal years, funds appropriated
18 to the Department of Children and Family Services for the
19 purpose of expanding community mental health services must be
20 used to implement programs that emphasize crisis services as
21 defined in s. 394.67~~(3)~~~~(4)~~ and treatment services,
22 rehabilitative services, support services, and case management
23 services, as defined in s. 394.67~~(15)~~~~(16)~~. Following the
24 2002-2003 fiscal year, the Department of Children and Family
25 Services must continue to expand the provision of these
26 community mental health services.

27 (4) By January 1, 2004, the crisis services defined in
28 s. 394.67~~(3)~~~~(4)~~ shall be implemented, as appropriate, in the
29 state's public community mental health system to serve
30 children and adults who are experiencing an acute mental or
31 emotional crisis, as defined in s. 394.67~~(17)~~~~(18)~~. By January

1 1, 2006, the mental health services defined in s.
2 394.67(15)(16) shall be implemented, as appropriate, in the
3 state's public community mental health system to serve adults
4 and older adults who have a severe and persistent mental
5 illness and to serve children who have a serious emotional
6 disturbance or mental illness, as defined in s. 394.492(6).

7 Section 29. Section 394.875, Florida Statutes, is
8 amended to read:

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

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

24 (b) The purpose of a residential treatment facility is
25 to be a part of a comprehensive treatment program for mentally
26 ill individuals in a community-based residential setting.

27 (c) The purpose of a residential treatment center for
28 children and adolescents is to provide mental health
29 assessment and treatment services pursuant to ss. 394.491,
30 394.495, and 394.496 to children and adolescents who meet the
31

1 target population criteria specified in s. 394.493(1)(a), (b),
2 or (c).

3 (2) The requirements of part II of chapter 408 apply
4 to the provision of services that require licensure under ss.
5 394.455-394.904 and part II of chapter 408 and to entities
6 licensed by or applying for such licensure from the Agency for
7 Health Care Administration pursuant to ss. 394.455-394.904. A
8 license issued by the agency is required in order to operate
9 ~~It is unlawful for any entity to hold itself out as a crisis~~
10 ~~stabilization unit, a residential treatment facility, or a~~
11 ~~residential treatment center for children and adolescents, or~~
12 ~~to act as a crisis stabilization unit, a residential treatment~~
13 ~~facility, or a residential treatment center for children and~~
14 ~~adolescents in this state, unless it is licensed by the agency~~
15 ~~pursuant to this chapter.~~

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

19 ~~(4) The agency may maintain an action in circuit court~~
20 ~~to enjoin the unlawful operation of a crisis stabilization~~
21 ~~unit, a residential treatment facility, or a residential~~
22 ~~treatment center for children and adolescents if the agency~~
23 ~~first gives the violator 14 days' notice of its intention to~~
24 ~~maintain such action and if the violator fails to apply for~~
25 ~~licensure within such 14 day period.~~

26 ~~(3)(5)~~ The following are exempt from licensure as
27 required in ss. 394.455-394.904 ~~Subsection (2) does not apply~~
28 ~~to:~~

29 (a) Homes for special services licensed under chapter
30 400. ~~;~~ ~~or~~

31 (b) Nursing homes licensed under chapter 400.

1 (c) Comprehensive transitional education programs
2 licensed under s. 393.067.

3 ~~(4)(6)~~ The department, in consultation with the
4 agency, may establish multiple license classifications for
5 residential treatment facilities.

6 ~~(5)(7)~~ The agency may not issue a license to a crisis
7 stabilization unit unless the unit receives state mental
8 health funds and is affiliated with a designated public
9 receiving facility.

10 ~~(6)(8)~~ The agency may issue a license for a crisis
11 stabilization unit or short-term residential treatment
12 facility, certifying the number of authorized beds for such
13 facility as indicated by existing need and available
14 appropriations. The agency may disapprove an application for
15 such a license if it determines that a facility should not be
16 licensed pursuant to the provisions of this chapter. Any
17 facility operating beds in excess of those authorized by the
18 agency shall, upon demand of the agency, reduce the number of
19 beds to the authorized number, forfeit its license, or provide
20 evidence of a license issued pursuant to chapter 395 for the
21 excess beds.

22 ~~(7)(9)~~ A children's crisis stabilization unit which
23 does not exceed 20 licensed beds and which provides separate
24 facilities or a distinct part of a facility, separate
25 staffing, and treatment exclusively for minors may be located
26 on the same premises as a crisis stabilization unit serving
27 adults. The department, in consultation with the agency, shall
28 adopt rules governing facility construction, staffing and
29 licensure requirements, and the operation of such units for
30 minors.

31

1 ~~(8)~~(10) The department, in consultation with the
2 agency, must adopt rules governing a residential treatment
3 center for children and adolescents which specify licensure
4 standards for: admission; length of stay; program and
5 staffing; discharge and discharge planning; treatment
6 planning; seclusion, restraints, and time-out; rights of
7 patients under s. 394.459; use of psychotropic medications;
8 and standards for the operation of such centers.

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

14 ~~(10)~~(12) Notwithstanding the other provisions of this
15 section, any facility licensed under former chapter 396 and
16 chapter 397 for detoxification, residential level I care, and
17 outpatient treatment may elect to license concurrently all of
18 the beds at such facility both for that purpose and as a
19 long-term residential treatment facility pursuant to this
20 section, if all of the following conditions are met:

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

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

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

30 (d) The number of beds to be licensed under this
31 chapter is equal to or less than the number of beds licensed

1 under former chapter 396 and chapter 397 as of January 1,
2 1993.

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

17 (f) The licensee agrees that the facility will meet
18 all licensure requirements for a residential treatment
19 facility, including minimum standards for compliance with
20 lifesafety requirements, except those licensure requirements
21 which are in express conflict with the conditions and other
22 provisions specified in this subsection.

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

26
27 Any facility licensed under this subsection is not required to
28 provide any services to any persons except those included in
29 the specified conditions of licensure, and is exempt from any
30 requirements related to the 60-day or greater average length
31

1 of stay imposed on community-based residential treatment
2 facilities otherwise licensed under this chapter.

3 ~~(13) 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 and financial~~
9 ~~officer, or other similarly titled individual who is~~
10 ~~responsible for the financial operation of the facility,~~
11 ~~including billings for client care and services. The applicant~~
12 ~~must comply with the procedures for level 2 background~~
13 ~~screening as set forth in chapter 435, as well as the~~
14 ~~requirements of s. 435.03(3).~~

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

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

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

1 ~~set forth in chapter 435, but a response has not yet been~~
2 ~~issued. A standard license may be granted to the applicant~~
3 ~~upon the agency's receipt of a report of the results of the~~
4 ~~Federal Bureau of Investigation background screening for each~~
5 ~~individual required by this section to undergo background~~
6 ~~screening which confirms that all standards have been met, or~~
7 ~~upon the granting of a disqualification exemption by the~~
8 ~~agency as set forth in chapter 435. Any other person who is~~
9 ~~required to undergo level 2 background screening may serve in~~
10 ~~his or her capacity pending the agency's receipt of the report~~
11 ~~from the Federal Bureau of Investigation. However, the person~~
12 ~~may not continue to serve if the report indicates any~~
13 ~~violation of background screening standards and a~~
14 ~~disqualification exemption has not been requested of and~~
15 ~~granted by the agency as set forth 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 shall 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 by a~~
26 ~~member of the board of directors of the applicant, its~~
27 ~~officers, or any individual owning 5 percent or more of the~~
28 ~~applicant. This requirement does not apply to a director of a~~
29 ~~not for profit corporation or organization if the director~~
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 or organization's board of directors, and has no~~
4 ~~financial interest and has no family members with a financial~~
5 ~~interest in the corporation or organization, provided that the~~
6 ~~director and the not for profit corporation or organization~~
7 ~~include in the application a statement affirming that the~~
8 ~~director's relationship to the corporation satisfies the~~
9 ~~requirements of this paragraph.~~

10 ~~(g) A license may not be granted to an applicant if~~
11 ~~the applicant or managing employee has been found guilty of,~~
12 ~~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 licensure if the~~
18 ~~applicant:~~

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 license renewal must contain~~
27 ~~the information required under paragraphs (c) and (f).~~

28 Section 30. Section 394.876, Florida Statutes, is
29 amended to read:

30 394.876 Applications.--
31

1 (1) In addition to the requirements of part II of
2 chapter 408, any person desiring to be licensed under this
3 chapter shall apply to the agency and ~~on forms provided by the~~
4 ~~agency.~~ the application must ~~shall~~ contain the following:

5 ~~(a) The name and address of the applicant, the name of~~
6 ~~the unit or facility, and the address of the unit or facility.~~

7 ~~(b)1. If the applicant is a partnership, association,~~
8 ~~or other form of entity other than an individual or a~~
9 ~~corporation, the name and address of each member or owner of~~
10 ~~the entity.~~

11 ~~2. If the applicant is a corporation, the name and~~
12 ~~address of each director or officer and the name and address~~
13 ~~of each person holding at least 5 percent ownership interest~~
14 ~~in the corporation.~~

15 ~~(c)~~ such information as the department and the agency
16 find necessary to determine the ability of the applicant to
17 carry out its responsibilities under this chapter.

18 ~~(2) The applicant shall furnish proof satisfactory to~~
19 ~~the agency of its financial ability to operate the unit or~~
20 ~~facility in accordance with this chapter. An applicant for an~~
21 ~~original license shall submit a balance sheet and a statement~~
22 ~~projecting revenues, expenses, taxes, extraordinary items, and~~
23 ~~other credits and charges for the first 6 months of operation.~~

24 ~~(2)(3)~~ The applicant shall provide proof of liability
25 insurance coverage in amounts set by the department and the
26 agency by rule.

27 ~~(4) The agency shall accept proof of accreditation by~~
28 ~~the Joint Commission on Accreditation of Hospitals in lieu of~~
29 ~~the information required by subsection (1).~~

30 Section 31. Section 394.877, Florida Statutes, is
31 amended to read:

1 394.877 Fees.--

2 ~~(1) In accordance with s. 408.805, an applicant or~~
3 licensee shall pay a fee for each license application
4 submitted under this part, part II of chapter 408, and
5 applicable rules. The amount of the fee shall be established
6 by rule. Each application for licensure or renewal must be
7 accompanied by a fee set by the department, in consultation
8 with the agency, by rule. Such fees shall be reasonably
9 calculated to cover only the cost of regulation under this
10 chapter.

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

13 Section 32. Section 394.878, Florida Statutes, is
14 repealed.

15 Section 33. Subsections (1), (3), (4), and (5) of
16 section 394.879, Florida Statutes, are amended to read:

17 394.879 Rules; enforcement.--

18 (1) The agency, in consultation with the department,
19 may adopt rules to administer the requirements of part II of
20 chapter 408. The department, in consultation with the agency,
21 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
22 administer ~~implement~~ the provisions of this chapter,
23 including, at a minimum, rules providing standards to ensure
24 that:

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

28 (b) Adequate space is provided each client of a
29 licensed facility.

30 (c) Licensed facilities are limited to an appropriate
31 number of beds.

1 (d) Each licensee establishes and implements adequate
2 infection control, housekeeping, sanitation, disaster
3 planning, and medical recordkeeping.

4 (e) Licensed facilities are established, organized,
5 and operated in accordance with programmatic standards of the
6 department.

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

9 (g) The use of restraint and seclusion is consistent
10 with recognized best practices and professional judgment; that
11 inherently dangerous restraint or seclusion procedures are
12 prohibited; that limitations are established on the use and
13 duration of restraint and seclusion; that measures are
14 established to ensure the safety of program participants and
15 staff during an incident of restraint or seclusion; that
16 procedures are created for staff to follow before, during, and
17 after incidents of restraint or seclusion; that professional
18 qualifications and training are established for staff who may
19 order or be engaged in the use of restraint or seclusion; and
20 that mandatory reporting, data collection, and data
21 dissemination procedures and requirements are instituted.
22 Rules adopted under this section must require that any
23 instance of the use of restraint or seclusion shall be
24 documented in the record of the client.

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 (5) The agency or the department may not adopt any
10 rule governing the design, construction, erection, alteration,
11 modification, repair, or demolition of crisis stabilization
12 units. It is the intent of the Legislature to preempt that
13 function to the Florida Building Commission and the State Fire
14 Marshal through adoption and maintenance of the Florida
15 Building Code and the Florida Fire Prevention Code. However,
16 the agency shall provide technical assistance to the
17 commission and the State Fire Marshal in updating the
18 construction standards of the Florida Building Code and the
19 Florida Fire Prevention Code which govern crisis stabilization
20 units. In addition, the agency may enforce the
21 special-occupancy provisions of the Florida Building Code and
22 the Florida Fire Prevention Code which apply to crisis
23 stabilization units in conducting any inspection authorized
24 under this part or part II of chapter 408.

25 Section 34. Paragraph (a) of subsection (1) of section
26 394.90, Florida Statutes, is amended to read:

27 394.90 Inspection; right of entry; records.--

28 (1)(a) The ~~department and the agency, in accordance~~
29 with s. 408.811, and the department may enter and inspect at
30 any time a licensed facility to determine whether the facility
31

1 is in compliance with this chapter, part II of chapter 408,
2 and applicable the rules ~~of the department.~~

3 Section 35. Section 394.902, Florida Statutes, is
4 amended to read:

5 394.902 Moratorium on admissions ~~Denial, suspension,~~
6 ~~and revocation; other remedies.--~~

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

11 ~~(2) In accordance with part II of chapter 408, the~~
12 ~~agency may impose a moratorium on elective admissions to a~~
13 ~~licensee or any program or portion of a licensed facility if~~
14 ~~the agency determines that any condition in the facility~~
15 ~~presents a threat to the public health or safety.~~

16 ~~(3) If the agency determines that an applicant or~~
17 ~~licensee is not in compliance with this chapter or the rules~~
18 ~~adopted under this chapter, the agency may deny, suspend, or~~
19 ~~revoke the license or application or may suspend, revoke, or~~
20 ~~impose reasonable restrictions on any portion of the license.~~
21 ~~If a license is revoked, the licensee is barred from~~
22 ~~submitting any application for licensure to the agency for a~~
23 ~~period of 6 months following revocation.~~

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

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

30 Section 36. Subsection (7) of section 394.907, Florida
31 Statutes, is amended to read:

1 394.907 Community mental health centers; quality
2 assurance programs.--

3 (7) The department shall have access to all records
4 necessary to determine licensee ~~agency~~ compliance with the
5 provisions of this section. The records of quality assurance
6 programs which relate solely to actions taken in carrying out
7 the provisions of this section, and records obtained by the
8 department to determine licensee ~~agency~~ compliance with this
9 section, are confidential and exempt from s. 119.07(1). Such
10 records are not admissible in any civil or administrative
11 action, except in disciplinary proceedings by the Department
12 of Business and Professional Regulation and the appropriate
13 regulatory board, nor shall such records be available to the
14 public as part of the record of investigation for, and
15 prosecution in disciplinary proceedings made available to the
16 public by the Department of Business and Professional
17 Regulation or the appropriate regulatory board. Meetings or
18 portions of meetings of quality assurance program committees
19 that relate solely to actions taken pursuant to this section
20 are exempt from s. 286.011.

21 Section 37. Subsections (5) through (33) of section
22 395.002, Florida Statutes, are renumbered as subsections (4)
23 through (32), respectively, and present subsections (4), (11),
24 and (29) of that section are amended to read:

25 395.002 Definitions.--As used in this chapter:

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

31

1 ~~(10)(11)~~ "General hospital" means any facility which
2 meets the provisions of subsection~~(12)(13)~~ and which
3 regularly makes its facilities and services available to the
4 general population.

5 ~~(28)(29)~~ "Specialty hospital" means any facility which
6 meets the provisions of subsection~~(12)(13)~~, and which
7 regularly makes available either:

8 (a) The range of medical services offered by general
9 hospitals, but restricted to a defined age or gender group of
10 the population;

11 (b) A restricted range of services appropriate to the
12 diagnosis, care, and treatment of patients with specific
13 categories of medical or psychiatric illnesses or disorders;
14 or

15 (c) Intensive residential treatment programs for
16 children and adolescents as defined in subsection~~(15)(16)~~.

17 Section 38. Section 395.003, Florida Statutes, is
18 amended to read:

19 395.003 Licensure; ~~issuance, renewal,~~ denial,
20 ~~modification,~~ suspension, and revocation.--

21 (1)(a) The requirements of part II of chapter 408
22 apply to the provision of services that require licensure
23 pursuant to ss. 395.001-395.1065 and part II of chapter 408
24 and to entities licensed by or applying for such licensure
25 from the Agency for Health Care Administration pursuant to ss.
26 395.001-395.1065. A license issued by the agency is required
27 in order to operate ~~A person may not establish, conduct, or~~
28 ~~maintain~~ a hospital, ambulatory surgical center, or mobile
29 surgical facility in this state ~~without first obtaining a~~
30 ~~license under this part.~~

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

6 2. This part does not apply to veterinary hospitals or
7 to commercial business establishments using the word
8 "hospital," "ambulatory surgical center," or "mobile surgical
9 facility" as a part of a trade name if no treatment of human
10 beings is performed on the premises of such establishments.

11 ~~(c)3-~~ Until July 1, 2006, additional emergency
12 departments located off the premises of licensed hospitals may
13 not be authorized by the agency.

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

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

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

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

3 (a)(d) In addition to the requirements in part II of
4 chapter 408, the agency shall, at the request of a licensee,
5 issue a single license to a licensee for facilities located on
6 separate premises. Such a license shall specifically state the
7 location of the facilities, the services, and the licensed
8 beds available on each separate premises. If a licensee
9 requests a single license, the licensee shall designate which
10 facility or office is responsible for receipt of information,
11 payment of fees, service of process, and all other activities
12 necessary for the agency to carry out the provisions of this
13 part.

14 (b)(e) The agency shall, at the request of a licensee
15 that is a teaching hospital as defined in s. 408.07(45), issue
16 a single license to a licensee for facilities that have been
17 previously licensed as separate premises, provided such
18 separately licensed facilities, taken together, constitute the
19 same premises as defined in s. 395.002~~(23)~~~~(24)~~. Such license
20 for the single premises shall include all of the beds,
21 services, and programs that were previously included on the
22 licenses for the separate premises. The granting of a single
23 license under this paragraph shall not in any manner reduce
24 the number of beds, services, or programs operated by the
25 licensee.

26 (c)(f) Intensive residential treatment programs for
27 children and adolescents which have received accreditation
28 from an accrediting organization as defined in s. 395.002(1)
29 and which meet the minimum standards developed by rule of the
30 agency for such programs shall be licensed by the agency under
31 this part.

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

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

14 ~~(3)2. In addition to the requirements of s. 408.807,~~
15 ~~after a change of ownership has been approved by the agency,~~
16 ~~the transferee shall be liable for any liability to the state,~~
17 ~~regardless of when identified, resulting from changes to~~
18 ~~allowable costs affecting provider reimbursement for Medicaid~~
19 ~~participation or Public Medical Assistance Trust Fund~~
20 ~~Assessments, and related administrative fines. ~~The transferee,~~~~
21 ~~~~simultaneously with the transfer of ownership, shall pay or~~~~
22 ~~~~make arrangements to pay to the agency or the department any~~~~
23 ~~~~amount owed to the agency or the department; payment~~~~
24 ~~~~assurances may be in the form of an irrevocable credit~~~~
25 ~~~~instrument or payment bond acceptable to the agency or the~~~~
26 ~~~~department provided by or on behalf of the transferor. The~~~~
27 ~~~~issuance of a license to the transferee shall be delayed~~~~
28 ~~~~pending payment or until arrangement for payment acceptable to~~~~
29 ~~~~the agency or the department is made.~~~~

30 (4) The agency shall issue a license which specifies
31 the service categories and the number of hospital beds in each

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

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

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

17 (c) A hospital that provides birthing services shall
18 affirm in writing as part of the application for a new,
19 provisional, or renewal license that the hospital shall comply
20 with s. 382.013(2)(c), which includes assisting unmarried
21 parents who request assistance in executing a voluntary
22 acknowledgment of paternity. No fine or other sanction under
23 s. 395.1065 may be imposed on a hospital for noncompliance
24 with s. 382.013(2)(c).

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

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

30 (7)(8) In addition to the requirements of part II of
31 chapter 408, whenever the agency finds that there has been a

1 substantial failure to comply with the requirements
2 established under this part or in rules, the agency is
3 authorized to deny, modify, suspend, and ~~or~~ revoke:

4 (a) A license;

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

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

10 ~~(8)(9)~~ A hospital may not be licensed or relicensed
11 if:

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

17 1. Cardiac-related diseases and disorders classified
18 as diagnosis-related groups 103-145, 478-479, 514-518, or
19 525-527;

20 2. Orthopedic-related diseases and disorders
21 classified as diagnosis-related groups 209-256, 471, 491,
22 496-503, or 519-520;

23 3. Cancer-related diseases and disorders classified as
24 diagnosis-related groups 64, 82, 172, 173, 199, 200, 203,
25 257-260, 274, 275, 303, 306, 307, 318, 319, 338, 344, 346,
26 347, 363, 366, 367, 400-414, 473, or 492; or

27 4. Any combination of the above discharges.

28 (b) The hospital restricts its medical and surgical
29 services to primarily or exclusively cardiac, orthopedic,
30 surgical, or oncology specialties.

31

1 ~~(9)(10)~~ A hospital licensed as of June 1, 2004, shall
2 be exempt from subsection~~(8)(9)~~ as long as the hospital
3 maintains the same ownership, facility street address, and
4 range of services that were in existence on June 1, 2004. Any
5 transfer of beds, or other agreements that result in the
6 establishment of a hospital or hospital services within the
7 intent of this section, shall be subject to subsection~~(8)~~
8 ~~(9)~~. Unless the hospital is otherwise exempt under subsection
9 ~~(8)(9)~~, the agency shall deny or revoke the license of a
10 hospital that violates any of the criteria set forth in that
11 subsection.

12 ~~(10)(11)~~ The agency may adopt rules implementing the
13 licensure requirements set forth in subsection~~(8)(9)~~. Within
14 14 days after rendering its decision on a license application
15 or revocation, the agency shall publish its proposed decision
16 in the Florida Administrative Weekly. Within 21 days after
17 publication of the agency's decision, any authorized person
18 may file a request for an administrative hearing. In
19 administrative proceedings challenging the approval, denial,
20 or revocation of a license pursuant to subsection~~(8)(9)~~, the
21 hearing must be based on the facts and law existing at the
22 time of the agency's proposed agency action. Existing
23 hospitals may initiate or intervene in an administrative
24 hearing to approve, deny, or revoke licensure under subsection
25 ~~(8)(9)~~ based upon a showing that an established program will
26 be substantially affected by the issuance or renewal of a
27 license to a hospital within the same district or service
28 area.

29 Section 39. Section 395.004, Florida Statutes, is
30 amended to read:

31 395.004 Application for license; l7 fees; ~~expenses~~.--

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

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

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

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

28 Section 40. Section 395.0055, Florida Statutes, is
29 repealed.

30 Section 41. Section 395.0161, Florida Statutes, is
31 amended to read:

1 395.0161 Licensure inspection.--

2 (1) In addition to the requirement of s. 408.811, the

3 agency shall make or cause to be made such inspections and

4 investigations as it deems necessary, including:

5 (a) Inspections directed by the federal Centers for

6 Medicare and Medicaid Services Health Care Financing

7 Administration.

8 (b) Validation inspections.

9 (c) Lifesafety inspections.

10 (d) Licensure complaint investigations, including full

11 licensure investigations with a review of all licensure

12 standards as outlined in the administrative rules. Complaints

13 received by the agency from individuals, organizations, or

14 other sources are subject to review and investigation by the

15 agency.

16 (e) Emergency access complaint investigations.

17 (f) Inspections of mobile surgical facilities at each

18 time a facility establishes a new location, prior to the

19 admission of patients. However, such inspections shall not be

20 required when a mobile surgical facility is moved temporarily

21 to a location where medical treatment will not be provided.

22 (2) The agency shall accept, in lieu of its own

23 periodic inspections for licensure, the survey or inspection

24 of an accrediting organization, provided the accreditation of

25 the licensed facility is not provisional and provided the

26 licensed facility authorizes release of, and the agency

27 receives the report of, the accrediting organization. The

28 agency shall develop, and adopt by rule, criteria for

29 accepting survey reports of accrediting organizations in lieu

30 of conducting a state licensure inspection.

31

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

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

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

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

20 Section 42. Subsections (2) and (3) of section
21 395.0163, Florida Statutes, are amended to read:

22 395.0163 Construction inspections; plan submission and
23 approval; fees.--

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

1 costs on all subsequent portions of the review and
2 construction inspections. The initial fee payment shall
3 accompany the initial submission of plans and specifications.
4 Any subsequent payment that is due is payable upon receipt of
5 the invoice from the agency.

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

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

19 Section 43. Subsection (6) of section 395.0193,
20 Florida Statutes, is amended to read:

21 395.0193 Licensed facilities; peer review;
22 disciplinary powers; agency or partnership with physicians.--

23 (6) For a single incident or series of isolated
24 incidents that are nonwillful violations of the reporting
25 requirements of this section or part II of chapter 408, the
26 agency shall first seek to obtain corrective action by the
27 facility. If correction is not demonstrated within the
28 timeframe established by the agency or if there is a pattern
29 of nonwillful violations of this section or part II of chapter
30 408, the agency may impose an administrative fine, not to
31 exceed \$5,000 for any violation of the reporting requirements

1 of this section or part II of chapter 408. The administrative
2 fine for repeated nonwillful violations ~~may shall~~ not exceed
3 \$10,000 for any violation. The administrative fine for each
4 intentional and willful violation may not exceed \$25,000 per
5 violation, per day. The fine for an intentional and willful
6 violation of this section or part II of chapter 408 may not
7 exceed \$250,000. In determining the amount of fine to be
8 levied, the agency shall be guided by s. 395.1065(2)(b).

9 Section 44. Subsection (12) of section 395.0197,
10 Florida Statutes, is amended to read:

11 395.0197 Internal risk management program.--

12 (12) In addition to any penalty imposed pursuant to
13 this section or part II of chapter 408, the agency shall
14 require a written plan of correction from the facility. For a
15 single incident or series of isolated incidents that are
16 nonwillful violations of the reporting requirements of this
17 section or part II of chapter 408, the agency shall first seek
18 to obtain corrective action by the facility. If the correction
19 is not demonstrated within the timeframe established by the
20 agency or if there is a pattern of nonwillful violations of
21 this section or part II of chapter 408, the agency may impose
22 an administrative fine, not to exceed \$5,000 for any violation
23 of the reporting requirements of this section or part II of
24 chapter 408. The administrative fine for repeated nonwillful
25 violations ~~may shall~~ not exceed \$10,000 for any violation. The
26 administrative fine for each intentional and willful violation
27 may not exceed \$25,000 per violation, per day. The fine for an
28 intentional and willful violation of this section or part II
29 of chapter 408 may not exceed \$250,000. In determining the
30 amount of fine to be levied, the agency shall be guided by s.
31 395.1065(2)(b).

1 Section 45. Section 395.0199, Florida Statutes, is
2 amended to read:

3 395.0199 Private utilization review.--

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

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

7 (b) Foster greater coordination between providers and
8 health insurers performing utilization review.

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

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

19 (2) The requirements of part II of chapter 408 apply
20 to the provision of services that require registration or
21 licensure pursuant to this section and part II of chapter 408
22 and to persons registered by or applying for such registration
23 from the Agency for Health Care Administration pursuant to
24 this section. Registration or a license issued by the agency
25 is required in order to perform as a private review agent
26 conducting utilization review as to health care services in
27 this state ~~performed or proposed to be performed in this state~~
28 ~~shall register with the agency in accordance with this~~
29 ~~section.~~

30 (3) In accordance with s. 408.805, an applicant for
31 registration or the registrant shall pay a fee for each

1 registration application submitted under this section, part II
2 of chapter 408, and applicable rules. The amount of the fee
3 shall be established by rule and Registration shall be made
4 annually with the agency on forms furnished by the agency and
5 shall be accompanied by the appropriate registration fee as
6 set by the agency. The fee shall be sufficient to pay for the
7 administrative costs of registering the agent, but may shall
8 not exceed \$500 \$250. The agency may also charge reasonable
9 fees, reflecting actual costs, to persons requesting copies of
10 registration.

11 ~~(4) Each applicant for registration must comply with~~
12 ~~the 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 or other similarly~~
17 ~~titled individual who is responsible for the operation of the~~
18 ~~entity. The applicant must comply with the procedures for~~
19 ~~level 2 background screening as set forth in chapter 435, as~~
20 ~~well as the requirements of s. 435.03(3).~~

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

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

31

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

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

30 ~~(f) Each applicant must submit to the agency a~~
31 ~~description and explanation of any conviction of an offense~~

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

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

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

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

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

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

6 ~~(4)(5)~~ In addition to the requirements of part II of
7 chapter 408, registration shall include the following:

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

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

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

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

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

1 physician practicing in the field of psychiatry for review of
2 mental health services, and shall include the written
3 evaluation and findings of the reviewing physician.

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

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

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

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

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

28 (5)(7) No insurer shall knowingly contract with or
29 utilize a private review agent which has failed to register as
30 required by this section or which has had a registration
31 revoked by the agency.

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

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

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

21 Section 46. Subsection (1) of section 395.1046,
22 Florida Statutes, is amended to read:

23 395.1046 Complaint investigation procedures.--

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

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

14 Section 47. Paragraph (f) of subsection (1) of section
15 395.1055, Florida Statutes, is amended, and subsection (9) is
16 added to that section, 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
20 part, which shall include reasonable and fair minimum
21 standards for ensuring that:

22 (f) All hospitals submit such data as necessary to
23 conduct certificate-of-need reviews required under part I of
24 chapter 408 ~~ss. 408.031-408.045~~. Such data shall include, but
25 shall not be limited to, patient origin data, hospital
26 utilization data, type of service reporting, and facility
27 staffing data. The agency may ~~shall~~ not collect data that
28 identifies or could disclose the identity of individual
29 patients. The agency shall utilize existing uniform statewide
30 data sources when available and shall minimize reporting costs
31 to hospitals.

1 (9) The agency may adopt rules to administer the
2 requirements of part II of chapter 408.

3 Section 48. Section 395.1065, Florida Statutes, is
4 amended to read:

5 395.1065 Criminal and administrative penalties;
6 ~~injunctions; emergency orders; moratorium.--~~

7 (1) In addition to s. 408.812, any person
8 establishing, conducting, managing, or operating any facility
9 without a license under this part ~~commits is guilty of a~~
10 misdemeanor and, upon conviction, shall be fined not more than
11 \$500 for the first offense and not more than \$1,000 for each
12 subsequent offense, and each day of continuing violation after
13 conviction shall be considered a separate offense.

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

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

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

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

30 3. Any previous violations of the licensee.

31

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

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

12 ~~(3) Notwithstanding the existence or pursuit of any~~
13 ~~other remedy, the agency may maintain an action in the name of~~
14 ~~the state for injunction or other process to enforce the~~
15 ~~provisions of this part and rules promulgated hereunder.~~

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

21 (3)(5) In accordance with part II of chapter 408, the
22 agency may impose an immediate moratorium on elective
23 admissions to any licensed facility, building, or portion
24 thereof, or service, when the agency determines that any
25 condition in the facility presents a threat to public health
26 or safety.

27 (4)(6) In seeking to impose penalties against a
28 facility as defined in s. 394.455 for a violation of part I of
29 chapter 394, the agency is authorized to rely on the
30 investigation and findings by the Department of Health in lieu
31 of conducting its own investigation.

1 ~~(5)(7)~~ The agency shall impose a fine of \$500 for each
2 instance of the facility's failure to provide the information
3 required by rules adopted pursuant to s. 395.1055(1)(h).

4 Section 49. Subsections (1) and (8) of section
5 395.10973, Florida Statutes, are amended to read:

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

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

11 (8) Enforce the special-occupancy provisions of the
12 Florida Building Code which apply to hospitals, intermediate
13 residential treatment facilities, and ambulatory surgical
14 centers in conducting any inspection authorized by this
15 chapter and part II of chapter 408.

16 Section 50. Section 395.10974, Florida Statutes, is
17 amended to read:

18 395.10974 Health care risk managers; qualifications,
19 licensure, fees.--

20 (1) The requirements of part II of chapter 408 apply
21 to the provision of services that require licensure pursuant
22 to ss. 395.10971-395.10975, 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 ss.
25 395.10971-395.10975. A license issued by the agency is
26 required in order to perform as a health care risk manager in
27 this state. Any person desiring to be licensed as a health
28 care risk manager shall submit an application on a form
29 provided by the agency. In order to qualify for licensure, the
30 applicant shall submit evidence satisfactory to the agency
31

1 | which demonstrates the applicant's competence, by education or
2 | experience, in the following areas:

3 | (a) Applicable standards of health care risk
4 | management.

5 | (b) Applicable federal, state, and local health and
6 | safety laws and rules.

7 | (c) General risk management administration.

8 | (d) Patient care.

9 | (e) Medical care.

10 | (f) Personal and social care.

11 | (g) Accident prevention.

12 | (h) Departmental organization and management.

13 | (i) Community interrelationships.

14 | (j) Medical terminology.

15 |

16 | Each applicant for licensure and each licensee must comply
17 | with all provisions of part II of chapter 408. The agency may
18 | require such additional information, from the applicant or any
19 | other person, as may be reasonably required to verify the
20 | information contained in the application.

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

24 | (a) Is 18 years of age or over;

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

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

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

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

3 (3) The agency shall issue a license to practice
4 health care risk management to any applicant who qualifies
5 under this section. In accordance with s. 408.805, an
6 applicant or licensee shall pay a fee for each license
7 application submitted under this part, part II of chapter 408,
8 and applicable rules. The amount of the fee shall be
9 established by rule as follows: and submits an application fee
10 of not more than \$75, a background-screening fingerprinting
11 fee of not more than \$75, and a license fee of not more than
12 \$100. ~~The agency shall by rule establish fees and procedures~~
13 ~~for the issuance and cancellation of licenses.~~

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

18 Section 51. Paragraph (c) of subsection (2) of section
19 395.602, Florida Statutes, is amended to read:

20 395.602 Rural hospitals.--

21 (2) DEFINITIONS.--As used in this part:

22 (c) "Inactive rural hospital bed" means a licensed
23 acute care hospital bed, as defined in s. 395.002(13)(14),
24 that is inactive in that it cannot be occupied by acute care
25 inpatients.

26 Section 52. Paragraph (c) of subsection (1) of section
27 395.701, Florida Statutes, is amended to read:

28 395.701 Annual assessments on net operating revenues
29 for inpatient and outpatient services to fund public medical
30 assistance; administrative fines for failure to pay
31 assessments when due; exemption.--

1 (1) For the purposes of this section, the term:

2 (c) "Hospital" means a health care institution as
3 defined in s. 395.002(12)(~~13~~), but does not include any
4 hospital operated by the agency or the Department of
5 Corrections.

6 Section 53. Subsection (4) of section 400.0073,
7 Florida Statutes, is amended to read:

8 400.0073 State and local ombudsman council
9 investigations.--

10 (4) If the ombudsman or any state or local council
11 member is not allowed to enter a long-term care facility, the
12 administrator of the facility shall be considered to have
13 interfered with a representative of the office, the state
14 council, or the local council in the performance of official
15 duties as described in s. 400.0083(1) and to have committed a
16 violation of this part. The ombudsman shall report a
17 facility's refusal to allow entry to the agency, and the
18 agency shall record the report and take it into consideration
19 when determining actions allowable under s. 400.102, s.
20 400.121, s. 429.14 ~~400.414~~, s. 429.19 ~~400.419~~, s. 429.69
21 ~~400.6194~~, or s. 429.71 ~~400.6196~~.

22 Section 54. Subsection (4) of section 400.0074,
23 Florida Statutes, is amended to read:

24 400.0074 Local ombudsman council onsite administrative
25 assessments.--

26 (4) An onsite administrative assessment may not be
27 accomplished by forcible entry. However, if the ombudsman or a
28 state or local council member is not allowed to enter a
29 long-term care facility, the administrator of the facility
30 shall be considered to have interfered with a representative
31 of the office, the state council, or the local council in the

1 performance of official duties as described in s. 400.0083(1)
2 and to have committed a violation of this part. The ombudsman
3 shall report the refusal by a facility to allow entry to the
4 agency, and the agency shall record the report and take it
5 into consideration when determining actions allowable under s.
6 400.102, s. 400.121, s. 429.14 ~~400.414~~, s. 429.19 ~~400.419~~, s.
7 429.69 ~~400.6194~~, or s. 429.71 ~~400.6196~~.

8 Section 55. Subsections (6) through (19) of section
9 400.021, Florida Statutes, are renumbered as subsections (5)
10 through (18), respectively, and present subsections (5) and
11 (20) of that section are amended to read:

12 400.021 Definitions.--When used in this part, unless
13 the context otherwise requires, the term:

14 ~~(5) "Controlling interest" means:~~

15 ~~(a) The applicant for licensure or a licensee;~~

16 ~~(b) A person or entity that serves as an officer of,~~
17 ~~is on the board of directors of, or has a 5 percent or greater~~
18 ~~ownership interest in the management company or other entity,~~
19 ~~related or unrelated, which the applicant or licensee may~~
20 ~~contract with to operate the facility; or~~

21 ~~(c) A person or entity that serves as an officer of,~~
22 ~~is on the board of directors of, or has a 5 percent or greater~~
23 ~~ownership interest in the applicant or licensee.~~

24
25 ~~The term does not include a voluntary board member.~~

26 ~~(20) "Voluntary board member" means a director of a~~
27 ~~not for profit corporation or organization who serves solely~~
28 ~~in a voluntary capacity for the corporation or organization,~~
29 ~~does not receive any remuneration for his or her services on~~
30 ~~the board of directors, and has no financial interest in the~~
31 ~~corporation or organization. The agency shall recognize a~~

1 ~~person as a voluntary board member following submission of a~~
2 ~~statement to the agency by the director and the not for profit~~
3 ~~corporation or organization which affirms that the director~~
4 ~~conforms to this definition. The statement affirming the~~
5 ~~status of the director must be submitted to the agency on a~~
6 ~~form provided by the agency.~~

7 Section 56. 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 s. 400.102, s. 400.121, or part
13 II of chapter 408. In order to determine whether the licensee
14 is adequately protecting residents' rights, the licensure
15 ~~annual~~ inspection of the facility shall include private
16 informal conversations with a sample of residents to discuss
17 residents' experiences within the facility with respect to
18 rights specified in this section and general compliance with
19 standards, and consultation with the ombudsman council in the
20 local planning and service area of the Department of Elderly
21 Affairs in which the nursing home is located.

22 Section 57. Paragraph (b) of subsection (1) of section
23 400.051, Florida Statutes, is amended to read:

24 400.051 Homes or institutions exempt from the
25 provisions of this part.--

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

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

30 Section 58. Section 400.062, Florida Statutes, is
31 amended to read:

1 400.062 License required; fee; disposition; ~~display;~~
2 ~~transfer.~~--

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

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

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

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

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

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

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 59. 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)(b), ~~400.111(1)~~,
21 400.121(2), and 400.23(8). Such funds shall be for the sole
22 purpose of paying for the appropriate alternate placement,
23 care, and treatment of residents who are removed from a
24 facility licensed under this part or a facility specified in
25 s. 393.0678(1) in which the agency determines that existing
26 conditions or practices constitute an immediate danger to the
27 health, safety, or security of the residents. If the agency
28 determines that it is in the best interest of the health,
29 safety, or security of the residents to provide for an orderly
30 removal of the residents from the facility, the agency may
31 utilize such funds to maintain and care for the residents in

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

10 Section 60. Section 400.071, Florida Statutes, is
11 amended to read:

12 400.071 Application for license.--

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

16 (1)(2) In addition to the requirements of part II of
17 chapter 408, the application for a license shall be under oath
18 and must shall 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 ~~(a)(e)~~ The location of the facility for which a
4 license is sought and an indication, as in the original
5 application, that such location conforms to the local zoning
6 ordinances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(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)~~ (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 61. Section 400.0712, Florida Statutes, is
31 amended to read:

1 400.0712 Application for inactive license.--

2 (1) As specified in s. 408.321(4) and this section,
3 the agency may issue an inactive license to a nursing home
4 facility for all or a portion of its beds. Any request by a
5 licensee that a nursing home or portion of a nursing home
6 become inactive must be submitted to the agency in the
7 approved format. The facility may not initiate any suspension
8 of services, notify residents, or initiate inactivity facility
9 ~~closure~~ before receiving approval from the agency; and a
10 licensee facility that violates this provision may shall not
11 be issued an inactive license. ~~Upon agency approval of an~~
12 ~~inactive license, the nursing home shall notify residents of~~
13 ~~any necessary discharge or transfer as provided in s.~~
14 ~~400.0255.~~

15 (2) The agency may issue an inactive license to a
16 nursing home that chooses to use an unoccupied contiguous
17 portion of the facility for an alternative use to meet the
18 needs of elderly persons through the use of less restrictive,
19 less institutional services.

20 (a) An inactive license issued under this subsection
21 may be granted for a period not to exceed the current
22 licensure expiration date 12 months but may be renewed
23 ~~annually~~ by the agency at the time of licensure renewal for 12
24 ~~months~~.

25 (b) A request to extend the inactive license must be
26 submitted to the agency in the approved format and approved by
27 the agency in writing.

28 (c) Nursing homes that receive an inactive license to
29 provide alternative services shall not receive preference for
30 participation in the Assisted Living for the Elderly Medicaid
31 waiver.

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

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

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

11 ~~(c) Reactivation of an inactive license requires that~~
12 ~~the applicant pay all licensure fees and be inspected by the~~
13 ~~agency to confirm that all of the requirements of this part~~
14 ~~and applicable rules are met.~~

15 ~~(3)(4)~~ The agency shall adopt rules pursuant to ss.
16 120.536(1) and 120.54 necessary to implement this section.

17 Section 62. Section 400.102, Florida Statutes, is
18 amended to read:

19 400.102 Action by agency against licensee; grounds.--

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

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

25 ~~(2)(b)~~ Misappropriation or conversion of the property
26 of a resident of the facility;

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

31

1 ~~(d) Violation of provisions of this part or rules~~
2 ~~adopted under this part;~~

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

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

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

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

12 ~~(b) In the case of an applicant for relicensure or a~~
13 ~~current licensee, administrative action as provided in s.~~
14 ~~400.121 or injunctive action as authorized by s. 400.125.~~

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

17 Section 63. Section 400.111, Florida Statutes, is
18 amended to read:

19 400.111 Disclosure of controlling interest ~~Expiration~~
20 ~~of license; renewal.--~~

21 ~~(1) A license issued for the operation of a facility,~~
22 ~~unless sooner suspended or revoked, shall expire on the date~~
23 ~~set forth by the agency on the face of the license or 1 year~~
24 ~~from the date of issuance, whichever occurs first. Ninety days~~
25 ~~prior to the expiration date, an application for renewal shall~~
26 ~~be submitted to the agency. A license shall be renewed upon~~
27 ~~the filing of an application on forms furnished by the agency~~
28 ~~if the applicant has first met the requirements established~~
29 ~~under this part and all rules adopted under this part. The~~
30 ~~failure to file an application within the period established~~
31 ~~in this subsection shall result in a late fee charged to the~~

1 ~~licensee by the agency in an amount equal to 50 percent of the~~
2 ~~fee in effect on the last preceding regular renewal date. A~~
3 ~~late fee shall be levied for each and every day the filing of~~
4 ~~the license application is delayed, but in no event shall such~~
5 ~~fine aggregate more than \$5,000. If an application is received~~
6 ~~after the required filing date and exhibits a hand canceled~~
7 ~~postmark obtained from a United States Post Office dated on or~~
8 ~~before the required filing date, no fine will be levied.~~

9 ~~(2) A licensee against whom a revocation or suspension~~
10 ~~proceeding, or any judicial proceeding instituted by the~~
11 ~~agency under this part, is pending at the time of license~~
12 ~~renewal may be issued a temporary license effective until~~
13 ~~final disposition by the agency of such proceeding. If~~
14 ~~judicial relief is sought from the aforesaid administrative~~
15 ~~order, the court having jurisdiction may issue such orders~~
16 ~~regarding the issuance of a temporary permit during the~~
17 ~~pendency of the judicial proceeding.~~

18 ~~(3) The agency may not renew a license if the~~
19 ~~applicant has failed to pay any fines assessed by final order~~
20 ~~of the agency or final order of the Health Care Financing~~
21 ~~Administration under requirements for federal certification.~~
22 ~~The agency may renew the license of an applicant following the~~
23 ~~assessment of a fine by final order if such fine has been paid~~
24 ~~into an escrow account pending an appeal of a final order.~~

25 ~~(4) In addition to the requirements of part II of~~
26 ~~chapter 408, the licensee shall submit a signed affidavit~~
27 ~~disclosing any financial or ownership interest that a~~
28 ~~controlling interest licensee has held within the last 5 years~~
29 ~~in any entity licensed by the state or any other state to~~
30 ~~provide health or residential care which entity has closed~~
31 ~~voluntarily or involuntarily; has filed for bankruptcy; has~~

1 had a receiver appointed; has had a license denied, suspended,
2 or revoked; or has had an injunction issued against it which
3 was initiated by a regulatory agency. The affidavit must
4 disclose the reason such entity was closed, whether
5 voluntarily or involuntarily.

6 Section 64. Subsections (2) and (5) of section
7 400.1183, Florida Statutes, are amended to read:

8 400.1183 Resident grievance procedures.--

9 (2) Each facility shall maintain records of all
10 grievances and shall report ~~annually~~ to the agency at the time
11 of relicensure the total number of grievances handled during
12 the prior licensure period, a categorization of the cases
13 underlying the grievances, and the final disposition of the
14 grievances.

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

18 Section 65. Section 400.121, Florida Statutes, is
19 amended to read:

20 400.121 Denial, suspension, revocation of license;
21 ~~moratorium on admissions~~; administrative fines; procedure;
22 order to increase staffing.--

23 (1) The agency may deny an application, revoke or
24 suspend a license, and ~~or~~ impose an administrative fine, not
25 to exceed \$500 per violation per day for the violation of any
26 provision of this part, part II of chapter 408, or applicable
27 rules, against any applicant or licensee for the following
28 violations by the applicant, licensee, or other controlling
29 interest:

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

1 ~~(b) A demonstrated pattern of deficient practice;~~
2 ~~(c) Failure to pay any outstanding fines assessed by~~
3 ~~final order of the agency or final order of the Health Care~~
4 ~~Financing Administration pursuant to requirements for federal~~
5 ~~certification. The agency may renew or approve the license of~~
6 ~~an applicant following the assessment of a fine by final order~~
7 ~~if such fine has been paid into an escrow account pending an~~
8 ~~appeal of a final order;~~

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

11 **(b)(e)** An adverse action by a regulatory agency
12 against any other licensed facility that has a common
13 controlling interest with the licensee or applicant against
14 whom the action under this section is being brought. If the
15 adverse action involves solely the management company, the
16 applicant or licensee shall be given 30 days to remedy before
17 final action is taken. If the adverse action is based solely
18 upon actions by a controlling interest, the applicant or
19 licensee may present factors in mitigation of any proposed
20 penalty based upon a showing that such penalty is
21 inappropriate under the circumstances.

22
23 All hearings shall be held within the county in which the
24 licensee or applicant operates or applies for a license to
25 operate a facility as defined herein.

26 (2) Except as provided in s. 400.23(8), a \$500 fine
27 shall be imposed for each violation. Each day a violation of
28 this part or part II of chapter 408 occurs constitutes a
29 separate violation and is subject to a separate fine, but in
30 no event may any fine aggregate more than \$5,000. A fine may
31 be levied pursuant to this section in lieu of and

1 notwithstanding the provisions of s. 400.23. Fines paid shall
2 be deposited in the Resident Protection Trust Fund and
3 expended as provided in s. 400.063.

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

7 (a) Has had two moratoria issued pursuant to this part
8 or part II of chapter 408 which are imposed by final order for
9 substandard quality of care, as defined by 42 C.F.R. part 483,
10 within any 30-month period;

11 (b) Is conditionally licensed for 180 or more
12 continuous days;

13 (c) Is cited for two class I deficiencies arising from
14 unrelated circumstances during the same survey or
15 investigation; or

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

18
19 The licensee may present factors in mitigation of revocation,
20 and the agency may make a determination not to revoke a
21 license based upon a showing that revocation is inappropriate
22 under the circumstances.

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

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

31

1 ~~(4)(b)~~ If ~~Where~~ the agency has placed a moratorium
2 pursuant to this part or part II of chapter 408 on admissions
3 on any facility two times within a 7-year period, the agency
4 may suspend the nursing home license ~~of the nursing home and~~
5 ~~the facility's management company, if any. During the~~
6 ~~suspension, the agency shall take the facility into~~
7 ~~receivership and shall operate the facility.~~

8 ~~(5)(6)~~ An action taken by the agency to deny, suspend,
9 or revoke a facility's license under this part or part II of
10 chapter 408 shall be heard by the Division of Administrative
11 Hearings of the Department of Management Services within 60
12 days after the assignment of an administrative law judge,
13 unless the time limitation is waived by both parties. The
14 administrative law judge must render a decision within 30 days
15 after receipt of a proposed recommended order.

16 ~~(6)(7)~~ The agency is authorized to require a facility
17 to increase staffing beyond the minimum required by law, if
18 the agency has taken administrative action against the
19 facility for care-related deficiencies directly attributable
20 to insufficient staff. Under such circumstances, the facility
21 may request an expedited interim rate increase. The agency
22 shall process the request within 10 days after receipt of all
23 required documentation from the facility. A facility that
24 fails to maintain the required increased staffing is subject
25 to a fine of \$500 per day for each day the staffing is below
26 the level required by the agency.

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

31

1 ~~(7)(9)~~ Notwithstanding any other provision of law to
2 the contrary, agency action in an administrative proceeding
3 under this section may be overcome by the licensee upon a
4 showing by a preponderance of the evidence to the contrary.

5 ~~(8)(10)~~ In addition to any other sanction imposed
6 under this part or part II of chapter 408, in any final order
7 that imposes sanctions, the agency may assess costs related to
8 the investigation and prosecution of the case. Payment of
9 agency costs shall be deposited into the Health Care Trust
10 Fund.

11 Section 66. Section 400.125, Florida Statutes, is
12 repealed.

13 Section 67. Subsection (14) of section 400.141,
14 Florida Statutes, is amended to read:

15 400.141 Administration and management of nursing home
16 facilities.--Every licensed facility shall comply with all
17 applicable standards and rules of the agency and shall:

18 (14) Submit to the agency the information specified in
19 s. 400.071~~(1)(b)(2)(e)~~ for a management company within 30 days
20 after the effective date of the management agreement.

21
22 Facilities that have been awarded a Gold Seal under the
23 program established in s. 400.235 may develop a plan to
24 provide certified nursing assistant training as prescribed by
25 federal regulations and state rules and may apply to the
26 agency for approval of their program.

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

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

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

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

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

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

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

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

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

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

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

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

28 or

- 29 4. Audits completed by the agency.

30

31

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

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

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

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

1 through the end of the 30-month term period of that bond. The
2 agency is herein granted specific authority to promulgate all
3 rules pertaining to the administration and management of this
4 account, including withdrawals from the account, subject to
5 federal review and approval. This provision shall take effect
6 upon becoming law and shall apply to any leasehold license
7 application. The financial viability of the Medicaid nursing
8 home overpayment account shall be determined by the agency
9 through annual review of the account balance and the amount of
10 total outstanding, unpaid Medicaid overpayments owing from
11 leasehold licensees to the agency as determined by final
12 agency audits.

13 3. The leasehold licensee may meet the bond
14 requirement through other arrangements acceptable to the
15 agency. The agency is herein granted specific authority to
16 promulgate rules pertaining to lease bond arrangements.

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

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

27 6. Any failure of the nursing facility operator to
28 acquire, maintain, renew annually, or provide proof to the
29 agency shall be grounds for the agency to deny, ~~cancel,~~
30 revoke, and ~~or~~ suspend the facility license to operate such
31 facility and to take any further action, including, but not

1 limited to, enjoining the facility, asserting a moratorium
2 pursuant to part II of chapter 408, or applying for a
3 receiver, deemed necessary to ensure compliance with this
4 section and to safeguard and protect the health, safety, and
5 welfare of the facility's residents. A lease agreement
6 required as a condition of bond financing or refinancing under
7 s. 154.213 by a health facilities authority or required under
8 s. 159.30 by a county or municipality is not a leasehold for
9 purposes of this paragraph and is not subject to the bond
10 requirement of this paragraph.

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

13 400.18 Closing of nursing facility.--

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

31

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

4 Section 70. Subsections (1), (2), and (3) of section
5 400.19, Florida Statutes, are amended to read:

6 400.19 Right of entry and inspection.--

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

1 ~~or to elicit, receive, respond to, and resolve complaints.~~ The
2 agency shall, within 60 days after receipt of a complaint made
3 by a resident or resident's representative, complete its
4 investigation and provide to the complainant its findings and
5 resolution.

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

17 (3) The agency shall every 15 months conduct at least
18 one unannounced inspection to determine compliance by the
19 licensee with statutes, and with rules promulgated under the
20 provisions of those statutes, governing minimum standards of
21 construction, quality and adequacy of care, and rights of
22 residents. The survey shall be conducted every 6 months for
23 the next 2-year period if the facility has been cited for a
24 class I deficiency, has been cited for two or more class II
25 deficiencies arising from separate surveys or investigations
26 within a 60-day period, or has had three or more substantiated
27 complaints within a 6-month period, each resulting in at least
28 one class I or class II deficiency. In addition to any other
29 fees or fines in this part, the agency shall assess a fine for
30 each facility that is subject to the 6-month survey cycle. The
31 fine for the 2-year period shall be \$6,000, one-half to be

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

17 | Section 71. Subsection (1) of section 400.191, Florida
18 | Statutes, is amended to read:

19 | 400.191 Availability, distribution, and posting of
20 | reports and records.--

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

31 |

1 Section 72. Subsections (1), (2), (7), and (8) of
2 section 400.23, Florida Statutes, are amended to read:

3 400.23 Rules; evaluation and deficiencies; licensure
4 status.--

5 (1) It is the intent of the Legislature that rules
6 published and enforced pursuant to this part and part II of
7 chapter 408 shall include criteria by which a reasonable and
8 consistent quality of resident care may be ensured and the
9 results of such resident care can be demonstrated and by which
10 safe and sanitary nursing homes can be provided. It is
11 further intended that reasonable efforts be made to
12 accommodate the needs and preferences of residents to enhance
13 the quality of life in a nursing home. In addition, efforts
14 shall be made to minimize the paperwork associated with the
15 reporting and documentation requirements of these rules.

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

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

1 of chapter 408, the agency may enforce the special-occupancy
2 provisions of the Florida Building Code and the Florida Fire
3 Prevention Code which apply to nursing homes. Residents or
4 their representatives shall be able to request a change in the
5 placement of the bed in their room, provided that at admission
6 they are presented with a room that meets requirements of the
7 Florida Building Code. The location of a bed may be changed if
8 the requested placement does not infringe on the resident's
9 roommate or interfere with the resident's care or safety as
10 determined by the care planning team in accordance with
11 facility policies and procedures. In addition, the bed
12 placement may not be used as a restraint. Each facility shall
13 maintain a log of resident rooms with beds that are not in
14 strict compliance with the Florida Building Code in order for
15 such log to be used by surveyors and nurse monitors during
16 inspections and visits. A resident or resident representative
17 who requests that a bed be moved shall sign a statement
18 indicating that he or she understands the room will not be in
19 compliance with the Florida Building Code, but they would
20 prefer to exercise their right to self-determination. The
21 statement must be retained as part of the resident's care
22 plan. Any facility that offers this option must submit a
23 letter signed by the nursing home administrator of record to
24 the agency notifying it of this practice with a copy of the
25 policies and procedures of the facility. The agency is
26 directed to provide assistance to the Florida Building
27 Commission in updating the construction standards of the code
28 relative to nursing homes.

29 (b) The number and qualifications of all personnel,
30 including management, medical, nursing, and other professional
31 personnel, and nursing assistants, orderlies, and support

1 personnel, having responsibility for any part of the care
2 given residents.

3 (c) All sanitary conditions within the facility and
4 its surroundings, including water supply, sewage disposal,
5 food handling, and general hygiene which will ensure the
6 health and comfort of residents.

7 (d) The equipment essential to the health and welfare
8 of the residents.

9 (e) A uniform accounting system.

10 (f) The care, treatment, and maintenance of residents
11 and measurement of the quality and adequacy thereof, based on
12 rules developed under this chapter and the Omnibus Budget
13 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
14 1987), Title IV (Medicare, Medicaid, and Other Health-Related
15 Programs), Subtitle C (Nursing Home Reform), as amended.

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

1 of Health, the Agency for Health Care Administration, and the
2 Department of Community Affairs. Also, appropriate volunteer
3 organizations must be given the opportunity to review the
4 plan. The local emergency management agency shall complete
5 its review within 60 days and either approve the plan or
6 advise the facility of necessary revisions.

7 (h) The availability, distribution, and posting of
8 reports and records pursuant to s. 400.191 and the Gold Seal
9 Program pursuant to s. 400.235.

10 (7) The agency shall, at least every 15 months,
11 evaluate all nursing home facilities and make a determination
12 as to the degree of compliance by each licensee with the
13 established rules adopted under this part as a basis for
14 assigning a licensure status to that facility. The agency
15 shall base its evaluation on the most recent inspection
16 report, taking into consideration findings from other official
17 reports, surveys, interviews, investigations, and inspections.
18 In addition to license categories authorized under part II of
19 chapter 408, the agency shall assign a licensure status of
20 standard or conditional to each nursing home.

21 (a) A standard licensure status means that a facility
22 has no class I or class II deficiencies and has corrected all
23 class III deficiencies within the time established by the
24 agency.

25 (b) A conditional licensure status means that a
26 facility, due to the presence of one or more class I or class
27 II deficiencies, or class III deficiencies not corrected
28 within the time established by the agency, is not in
29 substantial compliance at the time of the survey with criteria
30 established under this part or with rules adopted by the
31 agency. If the facility has no class I, class II, or class

1 III deficiencies at the time of the followup survey, a
2 standard licensure status may be assigned.

3 (c) In evaluating the overall quality of care and
4 services and determining whether the facility will receive a
5 conditional or standard license, the agency shall consider the
6 needs and limitations of residents in the facility and the
7 results of interviews and surveys of a representative sampling
8 of residents, families of residents, ombudsman council members
9 in the planning and service area in which the facility is
10 located, guardians of residents, and staff of the nursing home
11 facility.

12 (d) The current licensure status of each facility must
13 be indicated in bold print on the face of the license. A list
14 of the deficiencies of the facility shall be posted in a
15 prominent place that is in clear and unobstructed public view
16 at or near the place where residents are being admitted to
17 that facility. Licensees receiving a conditional licensure
18 status for a facility shall prepare, within 10 working days
19 after receiving notice of deficiencies, a plan for correction
20 of all deficiencies and shall submit the plan to the agency
21 for approval.

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

26 (e)(f) The agency shall adopt rules that:

27 1. Establish uniform procedures for the evaluation of
28 facilities.

29 2. Provide criteria in the areas referenced in
30 paragraph (c).

31

1 3. Address other areas necessary for carrying out the
2 intent of this section.

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

26 (a) A class I deficiency is a deficiency that the
27 agency determines presents a situation in which immediate
28 corrective action is necessary because the facility's
29 noncompliance has caused, or is likely to cause, serious
30 injury, harm, impairment, or death to a resident receiving
31 care in a facility. The condition or practice constituting a

1 class I violation shall be abated or eliminated immediately,
2 unless a fixed period of time, as determined by the agency, is
3 required for correction. A class I deficiency is subject to a
4 civil penalty of \$10,000 for an isolated deficiency, \$12,500
5 for a patterned deficiency, and \$15,000 for a widespread
6 deficiency. The fine amount shall be doubled for each
7 deficiency if the facility was previously cited for one or
8 more class I or class II deficiencies during the last
9 licensure ~~annual~~ inspection or any inspection or complaint
10 investigation since the last licensure ~~annual~~ inspection. A
11 fine must be levied notwithstanding the correction of the
12 deficiency.

13 (b) A class II deficiency is a deficiency that the
14 agency determines has compromised the resident's ability to
15 maintain or reach his or her highest practicable physical,
16 mental, and psychosocial well-being, as defined by an accurate
17 and comprehensive resident assessment, plan of care, and
18 provision of services. A class II deficiency is subject to a
19 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
20 a patterned deficiency, and \$7,500 for a widespread
21 deficiency. The fine amount shall be doubled for each
22 deficiency if the facility was previously cited for one or
23 more class I or class II deficiencies during the last
24 licensure ~~annual~~ inspection or any inspection or complaint
25 investigation since the last licensure ~~annual~~ inspection. A
26 fine shall be levied notwithstanding the correction of the
27 deficiency.

28 (c) A class III deficiency is a deficiency that the
29 agency determines will result in no more than minimal
30 physical, mental, or psychosocial discomfort to the resident
31 or has the potential to compromise the resident's ability to

1 maintain or reach his or her highest practical physical,
2 mental, or psychosocial well-being, as defined by an accurate
3 and comprehensive resident assessment, plan of care, and
4 provision of services. A class III deficiency is subject to a
5 civil penalty of \$1,000 for an isolated deficiency, \$2,000 for
6 a patterned deficiency, and \$3,000 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 citation for a class III deficiency must specify the time
13 within which the deficiency is required to be corrected. If a
14 class III deficiency is corrected within the time specified, a
15 ~~no~~ civil penalty may not ~~shall~~ be imposed.

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

20 Section 73. Section 400.241, Florida Statutes, is
21 amended to read:

22 400.241 Prohibited acts; penalties for violations.--

23 ~~(1) It is unlawful for any person or public body to~~
24 ~~establish, conduct, manage, or operate a home as defined in~~
25 ~~this part without obtaining a valid current license.~~

26 ~~(2) It is unlawful for any person or public body to~~
27 ~~offer or advertise to the public, in any way by any medium~~
28 ~~whatever, nursing home care or service or custodial services~~
29 ~~without obtaining a valid current license. It is unlawful for~~
30 ~~any holder of a license issued pursuant to the provisions of~~
31 ~~this part to advertise or hold out to the public that it holds~~

1 ~~a license for a facility other than that for which it actually~~
2 ~~holds a license.~~

3 ~~(1)(3)~~ It is unlawful for any person, long-term care
4 facility, or other entity to willfully interfere with the
5 unannounced inspections mandated by s. 400.19(3) or part II of
6 chapter 408. Alerting or advising a facility of the actual or
7 approximate date of such inspection shall be a per se
8 violation of this subsection.

9 ~~(2)(4)~~ A violation of any provision of this part or of
10 any minimum standard, rule, or regulation adopted pursuant
11 thereto constitutes a misdemeanor of the second degree,
12 punishable as provided in s. 775.082 or s. 775.083. Each day
13 of a continuing violation is ~~shall be considered~~ a separate
14 offense.

15 Section 74. Subsection (1) and paragraphs (a) and (c)
16 of subsection (4) of section 400.464, Florida Statutes, are
17 amended to read:

18 400.464 Home health agencies to be licensed;
19 expiration of license; exemptions; unlawful acts; penalties.--

20 (1) The requirements of part II of chapter 408 apply
21 to the provision of services that require licensure pursuant
22 to this part and part II of chapter 408 and entities licensed
23 or registered by or applying for such licensure or
24 registration from the Agency for Health Care Administration
25 pursuant to this part. A license issued by the agency is
26 required in order to operate a home health agency in this
27 state. Any home health agency must be licensed by the agency
28 to operate in this state. A license issued to a home health
29 agency, unless sooner suspended or revoked, expires 2 years
30 after its date of issuance.

31

1 (4)(a) ~~An organization may not provide, offer, or~~
2 ~~advertise home health services to the public unless the~~
3 ~~organization has a valid license or is specifically exempted~~
4 ~~under this part.~~ An organization that offers or advertises to
5 the public any service for which licensure or registration is
6 required under this part must include in the advertisement the
7 license number or registration number issued to the
8 organization by the agency. The agency shall assess a fine of
9 not less than \$100 to any licensee or registrant who fails to
10 include the license or registration number when submitting the
11 advertisement for publication, broadcast, or printing. The
12 fine for a second or subsequent offense is \$500. The holder of
13 a license issued under this part may not advertise or indicate
14 to the public that it holds a home health agency or nurse
15 registry license other than the one it has been issued.

16 (c) A person who violates paragraph (a) is subject to
17 an injunctive proceeding under s. 408.816 ~~s. 400.515~~. A
18 violation of paragraph (a) or s. 408.812 is a deceptive and
19 unfair trade practice and constitutes a violation of the
20 Florida Deceptive and Unfair Trade Practices Act under part II
21 of chapter 501.

22 Section 75. Section 400.471, Florida Statutes, is
23 amended to read:

24 400.471 Application for license; ~~fee; provisional~~
25 ~~license; temporary permit.--~~

26 (1) Each applicant for licensure must comply with all
27 provisions of this part and part II of chapter 408.
28 ~~Application for an initial license or for renewal of an~~
29 ~~existing license must be made under oath to the agency on~~
30 ~~forms furnished by it and must be accompanied by the~~
31 ~~appropriate license fee as provided in subsection (10). The~~

1 ~~agency must take final action on an initial licensure~~
2 ~~application within 60 days after receipt of all required~~
3 ~~documentation.~~

4 (2) In addition to the requirements of part II of
5 chapter 408, the initial applicant must file with the
6 application satisfactory proof that the home health agency is
7 in compliance with this part and applicable rules, including:

8 (a) A listing of services to be provided, either
9 directly by the applicant or through contractual arrangements
10 with existing providers.

11 (b) The number and discipline of professional staff to
12 be employed.

13 ~~(c) Proof of financial ability to operate.~~

14 (c)(d) Completion of questions concerning volume data
15 on the renewal application as determined by rule.

16 ~~(3) An applicant for initial licensure must~~
17 ~~demonstrate financial ability to operate by submitting a~~
18 ~~balance sheet and income and expense statement for the first 2~~
19 ~~years of operation which provide evidence of having sufficient~~
20 ~~assets, credit, and projected revenues to cover liabilities~~
21 ~~and expenses. The applicant shall have demonstrated financial~~
22 ~~ability to operate if the applicant's assets, credit, and~~
23 ~~projected revenues meet or exceed projected liabilities and~~
24 ~~expenses. All documents required under this subsection must be~~
25 ~~prepared in accordance with generally accepted accounting~~
26 ~~principles and must be compiled by a certified public~~
27 ~~accountant.~~

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

30 ~~(a) Upon receipt of a completed, signed, and dated~~
31 ~~application, the agency shall require background screening of~~

1 ~~the applicant, in accordance with the level 2 standards for~~
2 ~~screening set forth in chapter 435. As used in this~~
3 ~~subsection, the term "applicant" means the administrator, or a~~
4 ~~similarly titled person who is responsible for the day to day~~
5 ~~operation of the licensed home health agency, and the~~
6 ~~financial officer, or similarly titled individual who is~~
7 ~~responsible for the financial operation of the licensed home~~
8 ~~health agency.~~

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

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

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

1 ~~has not yet received background screening results from the~~
2 ~~Federal Bureau of Investigation. A standard license may be~~
3 ~~granted to the licensee upon the agency's receipt of a report~~
4 ~~of the results of the Federal Bureau of Investigation~~
5 ~~background screening for each individual required by this~~
6 ~~section to undergo background screening which confirms that~~
7 ~~all standards have been met, or upon the granting of a~~
8 ~~disqualification exemption by the agency as set forth in~~
9 ~~chapter 435. Any other person who is required to undergo level~~
10 ~~2 background screening may serve in his or her capacity~~
11 ~~pending the agency's receipt of the report from the Federal~~
12 ~~Bureau of Investigation. However, the person may not continue~~
13 ~~to serve if the report indicates any violation of background~~
14 ~~screening standards and a disqualification exemption has not~~
15 ~~been requested of and granted by the agency as set forth in~~
16 ~~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 licensee or~~
20 ~~potential licensee from the Medicare or Medicaid programs.~~
21 ~~Proof of compliance with the requirements for disclosure of~~
22 ~~ownership and control interest under the Medicaid or Medicare~~
23 ~~programs may be 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, administrator, or financial officer has been~~
13 ~~found guilty of, regardless of adjudication, or has entered a~~
14 ~~plea of nolo contendere or guilty to, any offense prohibited~~
15 ~~under the level 2 standards for screening set forth in chapter~~
16 ~~435, unless an exemption from disqualification has been~~
17 ~~granted by the agency as set forth in chapter 435.~~

18 ~~(h) The agency may deny or revoke licensure if the~~
19 ~~applicant has been or is currently excluded, suspended,~~
20 ~~terminated from, or has involuntarily withdrawn from~~
21 ~~participation in any governmental or private health care or~~
22 ~~health insurance program.~~

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

25 ~~(5) The agency may deny or revoke licensure if the~~
26 ~~applicant has falsely represented a material fact, or has~~
27 ~~omitted any material fact, from the application required by~~
28 ~~this section.~~

29 ~~(3)(6)~~ In addition to the requirements of s. 408.810,
30 the home health agency must also obtain and maintain the
31 following insurance coverage in an amount of not less than

1 \$250,000 per claim, and the home health agency must submit
2 proof of coverage with an initial application for licensure
3 and with each application for license renewal:

4 (a) Malpractice insurance as defined in s.
5 624.605(1)(k).†

6 (b) Liability insurance as defined in s.
7 624.605(1)(b).

8 ~~(7) Sixty days before the expiration date, an~~
9 ~~application for renewal must be submitted to the agency under~~
10 ~~oath on forms furnished by it, and a license must be renewed~~
11 ~~if the applicant has met the requirements established under~~
12 ~~this part and applicable rules. The home health agency must~~
13 ~~file with the application satisfactory proof that it is in~~
14 ~~compliance with this part and applicable rules. If there is~~
15 ~~evidence of financial instability, the home health agency must~~
16 ~~submit satisfactory proof of its financial ability to comply~~
17 ~~with the requirements of this part. The agency shall impose an~~
18 ~~administrative fine of \$50 per day for each day the home~~
19 ~~health agency fails to file an application within the~~
20 ~~timeframe specified in this subsection. Each day of continuing~~
21 ~~violation is a separate violation; however, the aggregate of~~
22 ~~such fines may not exceed \$500.~~

23 ~~(8) When transferring the ownership of a home health~~
24 ~~agency, the transferee must submit an application for a~~
25 ~~license at least 60 days before the effective date of the~~
26 ~~transfer. If the application is filed late, an administrative~~
27 ~~fine shall be imposed in the amount of \$50 per day. Each day~~
28 ~~of continuing violation is a separate violation; however, the~~
29 ~~aggregate of such fines may not exceed \$500. If the home~~
30 ~~health agency is being leased, a copy of the lease agreement~~
31 ~~must be filed with the application.~~

1 ~~(4)(9)~~ The agency shall accept, in lieu of its own
2 periodic licensure survey, submission of the survey of an
3 accrediting organization that is recognized by the agency if
4 the accreditation of the licensed home health agency is not
5 provisional and if the licensed home health agency authorizes
6 release of, and the agency receives the report of, the
7 accrediting organization.

8 ~~(5)(10)~~ 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 shall be set at ~~The license fee and renewal fee~~
13 ~~required of a home health agency are nonrefundable. The agency~~
14 ~~shall set the license fees in an amount that is sufficient to~~
15 ~~cover the agency's its costs in carrying out its~~
16 ~~responsibilities under this part, but not to exceed \$2,000 per~~
17 ~~biennium. However, state, county, or municipal governments~~
18 ~~applying for licenses under this part are exempt from the~~
19 ~~payment of license fees. All fees collected under this part~~
20 ~~must be deposited in the Health Care Trust Fund for the~~
21 ~~administration of this part.~~

22 ~~(11)~~ ~~The license must be displayed in a conspicuous~~
23 ~~place in the administrative office of the home health agency~~
24 ~~and is valid only while in the possession of the person to~~
25 ~~which it is issued. The license may not be sold, assigned, or~~
26 ~~otherwise transferred, voluntarily or involuntarily, and is~~
27 ~~valid only for the home health agency and location for which~~
28 ~~originally issued.~~

29 ~~(12)~~ ~~A home health agency against whom a revocation or~~
30 ~~suspension proceeding is pending at the time of license~~
31 ~~renewal may be issued a provisional license effective until~~

1 ~~final disposition by the agency of such proceedings. If~~
2 ~~judicial relief is sought from the final disposition, the~~
3 ~~court that has jurisdiction may issue a temporary permit for~~
4 ~~the duration of the judicial proceeding.~~

5 ~~(6)(13)~~ The agency may not issue a license designated
6 as certified to a home health agency that fails to satisfy the
7 requirements of a Medicare certification survey from the
8 agency.

9 ~~(14)~~ ~~The agency may not issue a license to a home~~
10 ~~health agency that has any unpaid fines assessed under this~~
11 ~~part.~~

12 Section 76. Section 400.474, Florida Statutes, is
13 amended to read:

14 400.474 Administrative Denial, suspension, revocation
15 ~~of license; injunction; grounds; penalties.--~~

16 (1) The agency may deny, revoke, and ~~or~~ suspend a
17 license and, ~~or~~ impose an administrative fine in the manner
18 provided in chapter 120, ~~or initiate injunctive proceedings~~
19 ~~under s. 400.515.~~

20 (2) Any of the following actions by a home health
21 agency or its employee is grounds for disciplinary action by
22 the agency:

23 (a) Violation of this part, part II of chapter 408, or
24 of applicable rules.

25 (b) An intentional, reckless, or negligent act that
26 materially affects the health or safety of a patient.

27 (c) Knowingly providing home health services in an
28 unlicensed assisted living facility or unlicensed adult
29 family-care home, unless the home health agency or employee
30 reports the unlicensed facility or home to the agency within
31 72 hours after providing the services.

1 ~~(3) The agency may impose the following penalties for~~
2 ~~operating without a license upon an applicant or owner who has~~
3 ~~in the past operated, or who currently operates, a licensed~~
4 ~~home health agency.~~

5 ~~(a) If a home health agency that is found to be~~
6 ~~operating without a license wishes to apply for a license, the~~
7 ~~home health agency may submit an application only after the~~
8 ~~agency has verified that the home health agency no longer~~
9 ~~operates an unlicensed home health agency.~~

10 ~~(a)(b)~~ In addition to the requirements of s. 408.813,
11 any person, partnership, or corporation that violates s.
12 408.813 paragraph (a) and that previously operated a licensed
13 home health agency or concurrently operates both a licensed
14 home health agency and an unlicensed home health agency
15 commits a felony of the third degree punishable as provided in
16 s. 775.082, s. 775.083, or s. 775.084. ~~If an owner has an~~
17 ~~interest in more than one home health agency and fails to~~
18 ~~license any one of those home health agencies, the agency must~~
19 ~~issue a cease and desist order for the activities of the~~
20 ~~unlicensed home health agency and impose a moratorium on any~~
21 ~~or all of the licensed related home health agencies until the~~
22 ~~unlicensed home health agency is licensed.~~

23 ~~(b)(c)~~ If any home health agency is found to be
24 operating without a license meets the criteria in paragraph
25 ~~(a) or paragraph (b)~~ and that home health agency has received
26 any government reimbursement for services ~~provided by an~~
27 ~~unlicensed home health agency~~, the agency shall make a fraud
28 referral to the appropriate government reimbursement program.

29 ~~(4) The agency may deny, revoke, or suspend the~~
30 ~~license of a home health agency, or may impose on a home~~
31

1 ~~health agency administrative fines not to exceed the aggregate~~
2 ~~sum of \$5,000 if:~~

3 ~~(a) The agency is unable to obtain entry to the home~~
4 ~~health agency to conduct a licensure survey, complaint~~
5 ~~investigation, surveillance visit, or monitoring visit.~~

6 ~~(b) An applicant or a licensed home health agency has~~
7 ~~falsely represented a material fact in the application, or has~~
8 ~~omitted from the application any material fact, including, but~~
9 ~~not limited to, the fact that the controlling or ownership~~
10 ~~interest is held by any officer, director, agent, manager,~~
11 ~~employee, affiliated person, partner, or shareholder who is~~
12 ~~not eligible to participate.~~

13 ~~(c) An applicant, owner, or person who has a 5 percent~~
14 ~~or greater interest in a licensed entity:~~

15 ~~1. Has been previously found by any licensing,~~
16 ~~certifying, or professional standards board or agency to have~~
17 ~~violated the standards or conditions that relate to home~~
18 ~~health related licensure or certification, or to the quality~~
19 ~~of home health related services provided; or~~

20 ~~2. Has been or is currently excluded, suspended,~~
21 ~~terminated from, or has involuntarily withdrawn from,~~
22 ~~participation in the Medicaid program of this state or any~~
23 ~~other state, the Medicare program, or any other governmental~~
24 ~~health care or health insurance program.~~

25 Section 77. Subsection (1) and paragraphs (a) and (b)
26 of subsection (2) of section 400.484, Florida Statutes, are
27 amended to read:

28 400.484 Right of inspection; deficiencies; fines.--

29 (1) In addition to the requirements of s. 408.811, Any
30 ~~duly authorized officer or employee of the agency may make~~
31 such inspections and investigations as are necessary in order

1 to determine the state of compliance with this part, part II
2 of chapter 408, and with applicable rules. ~~The right of~~
3 ~~inspection extends to any business that the agency has reason~~
4 ~~to believe is being operated as a home health agency without a~~
5 ~~license, but such inspection of any such business may not be~~
6 ~~made without the permission of the owner or person in charge~~
7 ~~unless a warrant is first obtained from a circuit court. Any~~
8 ~~application for a license issued under this part or for~~
9 ~~license renewal constitutes permission for an appropriate~~
10 ~~inspection to verify the information submitted on or in~~
11 ~~connection with the application.~~

12 (2) The agency shall impose fines for various classes
13 of deficiencies in accordance with the following schedule:

14 (a) A class I deficiency is any act, omission, or
15 practice that results in a patient's death, disablement, or
16 permanent injury, or places a patient at imminent risk of
17 death, disablement, or permanent injury. Upon finding a class
18 I deficiency, the agency may impose an administrative fine in
19 the amount of \$5,000 for each occurrence and each day that the
20 deficiency exists. ~~In addition, the agency may immediately~~
21 ~~revoke the license, or impose a moratorium on the admission of~~
22 ~~new patients, until the factors causing the deficiency have~~
23 ~~been corrected.~~

24 (b) A class II deficiency is any act, omission, or
25 practice that has a direct adverse effect on the health,
26 safety, or security of a patient. Upon finding a class II
27 deficiency, the agency may impose an administrative fine in
28 the amount of \$1,000 for each occurrence and each day that the
29 deficiency exists. ~~In addition, the agency may suspend the~~
30 ~~license, or impose a moratorium on the admission of new~~
31 ~~patients, until the deficiency has been corrected.~~

1 Section 78. Section 400.495, Florida Statutes, is
2 repealed.

3 Section 79. Section 400.497, Florida Statutes, is
4 amended to read:

5 400.497 Rules establishing minimum standards.--The
6 agency shall adopt, publish, and enforce rules to implement
7 part II of chapter 408 and this part, including, as
8 applicable, ss. 400.506 and 400.509, which must provide
9 reasonable and fair minimum standards relating to:

10 (1) The home health aide competency test and home
11 health aide training. The agency shall create the home health
12 aide competency test and establish the curriculum and
13 instructor qualifications for home health aide training.
14 Licensed home health agencies may provide this training and
15 shall furnish documentation of such training to other licensed
16 home health agencies upon request. Successful passage of the
17 competency test by home health aides may be substituted for
18 the training required under this section and any rule adopted
19 pursuant thereto.

20 (2) Shared staffing. The agency shall allow shared
21 staffing if the home health agency is part of a retirement
22 community that provides multiple levels of care, is located on
23 one campus, is licensed under this chapter or chapter 429, and
24 otherwise meets the requirements of law and rule.

25 (3) The criteria for the frequency of onsite licensure
26 surveys.

27 (4) Licensure application and renewal.

28 (5) The requirements for onsite and electronic
29 accessibility of supervisory personnel of home health
30 agencies.

31 (6) Information to be included in patients' records.

1 (7) Geographic service areas.

2 (8) Preparation of a comprehensive emergency
3 management plan pursuant to s. 400.492.

4 (a) The Agency for Health Care Administration shall
5 adopt rules establishing minimum criteria for the plan and
6 plan updates, with the concurrence of the Department of Health
7 and in consultation with the Department of Community Affairs.

8 (b) The rules must address the requirements in s.
9 400.492. In addition, the rules shall provide for the
10 maintenance of patient-specific medication lists that can
11 accompany patients who are transported from their homes.

12 (c) The plan is subject to review and approval by the
13 county health department. During its review, the county health
14 department shall contact state and local health and medical
15 stakeholders when necessary. The county health department
16 shall complete its review to ensure that the plan is in
17 accordance with the criteria in the Agency for Health Care
18 Administration rules within 90 days after receipt of the plan
19 and shall approve the plan or advise the home health agency of
20 necessary revisions. If the home health agency fails to submit
21 a plan or fails to submit the requested information or
22 revisions to the county health department within 30 days after
23 written notification from the county health department, the
24 county health department shall notify the Agency for Health
25 Care Administration. The agency shall notify the home health
26 agency that its failure constitutes a deficiency, subject to a
27 fine of \$5,000 per occurrence. If the plan is not submitted,
28 information is not provided, or revisions are not made as
29 requested, the agency may impose the fine.

30 (d) For any home health agency that operates in more
31 than one county, the Department of Health shall review the

1 plan, after consulting with state and local health and medical
2 stakeholders when necessary. The department shall complete its
3 review within 90 days after receipt of the plan and shall
4 approve the plan or advise the home health agency of necessary
5 revisions. The department shall make every effort to avoid
6 imposing differing requirements on a home health agency that
7 operates in more than one county as a result of differing or
8 conflicting comprehensive plan requirements of the counties in
9 which the home health agency operates.

10 (e) The requirements in this subsection do not apply
11 to:

12 1. A facility that is certified under chapter 651 and
13 has a licensed home health agency used exclusively by
14 residents of the facility; or

15 2. A retirement community that consists of residential
16 units for independent living and either a licensed nursing
17 home or an assisted living facility, and has a licensed home
18 health agency used exclusively by the residents of the
19 retirement community, provided the comprehensive emergency
20 management plan for the facility or retirement community
21 provides for continuous care of all residents with special
22 needs during an emergency.

23 Section 80. Section 400.506, Florida Statutes, is
24 amended to read:

25 400.506 Licensure of nurse registries; requirements;
26 penalties.--

27 (1) A nurse registry is exempt from the licensing
28 requirements of a home health agency but must be licensed as a
29 nurse registry. The requirements of part II of chapter 408
30 apply to the provision of services that require licensure
31 pursuant to ss. 400.506-400.518 and part II of chapter 408 and

1 to entities licensed by or applying for such license from the
2 Agency for Health Care Administration pursuant to ss.
3 400.506-400.518. A license issued by the agency is required
4 for the operation of a nurse registry. Each operational site
5 of the nurse registry must be licensed, unless there is more
6 than one site within a county. If there is more than one site
7 within a county, only one license per county is required. Each
8 operational site must be listed on the license.

9 (2) Each applicant for licensure and each licensee
10 must comply with all provisions of part II of chapter 408 and
11 this section. ~~the following requirements:~~

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

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 ~~health care or assisted living licensure requirements of this~~

1 ~~state is acceptable in fulfillment of the requirements of~~
2 ~~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. A standard license may be~~
9 ~~granted to the applicant upon the agency's receipt of a report~~
10 ~~of the results of the Federal Bureau of Investigation~~
11 ~~background screening for each individual required by this~~
12 ~~section to undergo background screening which confirms that~~
13 ~~all standards have been met, or upon the granting of a~~
14 ~~disqualification exemption by the agency as set forth in~~
15 ~~chapter 435. Any other person who is required to undergo level~~
16 ~~2 background screening may serve in his or her capacity~~
17 ~~pending the agency's receipt of the report from the Federal~~
18 ~~Bureau of Investigation. However, the person may not continue~~
19 ~~to serve if the report indicates any violation of background~~
20 ~~screening standards and a disqualification exemption has not~~
21 ~~been requested of and granted by the agency as set forth in~~
22 ~~chapter 435.~~

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

30 ~~(f) Each applicant must submit to the agency a~~
31 ~~description and explanation of any conviction of an offense~~

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

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

24 ~~(h) The agency may deny or revoke the license if any~~
25 ~~applicant:~~

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

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

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

6 (3) In accordance with s. 408.805, an applicant or
7 licensee shall pay a fee for each license application
8 submitted under ss. 400.508-400.518, part II of chapter 408,
9 and applicable rules. The amount of the fee shall be
10 established by rule and may not exceed \$2,000 per biennium.

11 ~~Application for license must be made to the Agency for Health~~
12 ~~Care Administration on forms furnished by it and must be~~
13 ~~accompanied by the appropriate licensure fee, as established~~
14 ~~by rule and not to exceed the cost of regulation under this~~
15 ~~part. The licensure fee for nurse registries may not exceed~~
16 ~~\$2,000 and must be deposited in the Health Care Trust Fund.~~

17 ~~(4) The Agency for Health Care Administration may~~
18 ~~deny, revoke, or suspend a license or impose an administrative~~
19 ~~fine in the manner provided in chapter 120 against a nurse~~
20 ~~registry that:~~

21 ~~(a) Fails to comply with this section or applicable~~
22 ~~rules.~~

23 ~~(b) Commits an intentional, reckless, or negligent act~~
24 ~~that materially affects the health or safety of a person~~
25 ~~receiving services.~~

26 ~~(5) A license issued for the operation of a nurse~~
27 ~~registry, unless sooner suspended or revoked, expires 2 years~~
28 ~~after its date of issuance. Sixty days before the expiration~~
29 ~~date, an application for renewal must be submitted to the~~
30 ~~Agency for Health Care Administration on forms furnished by~~
31 ~~it. The Agency for Health Care Administration shall renew the~~

1 | ~~license if the applicant has met the requirements of this~~
2 | ~~section and applicable rules. A nurse registry against which a~~
3 | ~~revocation or suspension proceeding is pending at the time of~~
4 | ~~license renewal may be issued a conditional license effective~~
5 | ~~until final disposition by the Agency for Health Care~~
6 | ~~Administration of such proceedings. If judicial relief is~~
7 | ~~sought from the final disposition, the court having~~
8 | ~~jurisdiction may issue a conditional license for the duration~~
9 | ~~of the judicial proceeding.~~

10 | ~~(6) The Agency for Health Care Administration may~~
11 | ~~institute injunctive proceedings under s. 400.515.~~

12 | ~~(4)(7)~~ A person that provides, offers, or advertises
13 | to the public any service for which licensure is required
14 | under this section must include in such advertisement the
15 | license number issued to it by the Agency for Health Care
16 | Administration. The agency shall assess a fine of not less
17 | than \$100 against any licensee who fails to include the
18 | license number when submitting the advertisement for
19 | publication, broadcast, or printing. The fine for a second or
20 | subsequent offense is \$500.

21 | ~~(8)(a) It is unlawful for a person to provide, offer,~~
22 | ~~or advertise to the public services as defined by rule without~~
23 | ~~obtaining a valid license from the Agency for Health Care~~
24 | ~~Administration. It is unlawful for any holder of a license to~~
25 | ~~advertise or hold out to the public that he or she holds a~~
26 | ~~license for other than that for which he or she actually holds~~
27 | ~~a license. A person who violates this subsection is subject to~~
28 | ~~injunctive proceedings under s. 400.515.~~

29 | ~~(b) A person who violates the provisions of paragraph~~
30 | ~~(a) commits a misdemeanor of the second degree, punishable as~~

31 |

1 ~~provided in s. 775.082 or s. 775.083. Each day of continuing~~
2 ~~violation is a separate offense.~~

3 (5)(a)(c) In addition to the requirements of s.
4 408.812, any person who owns, operates, or maintains an
5 unlicensed nurse registry and who, within 10 working days
6 after receiving notification from the agency, fails to cease
7 operation and apply for a license under this part commits a
8 misdemeanor of the second degree, punishable as provided in s.
9 775.082 or s. 775.083. Each day of continued operation is a
10 separate offense.

11 (b)(d) If a nurse registry fails to cease operation
12 after agency notification, the agency may impose a fine of
13 \$500 for each day of noncompliance.

14 ~~(9) Any duly authorized officer or employee of the~~
15 ~~Agency for Health Care Administration may make such~~
16 ~~inspections and investigations as are necessary to respond to~~
17 ~~complaints or to determine the state of compliance with this~~
18 ~~section and applicable rules.~~

19 ~~(a) If, in responding to a complaint, an agent or~~
20 ~~employee of the Agency for Health Care Administration has~~
21 ~~reason to believe that a crime has been committed, he or she~~
22 ~~shall notify the appropriate law enforcement agency.~~

23 ~~(b) If, in responding to a complaint, an agent or~~
24 ~~employee of the Agency for Health Care Administration has~~
25 ~~reason to believe that abuse, neglect, or exploitation has~~
26 ~~occurred, according to the definitions in chapter 415, he or~~
27 ~~she shall file a report under chapter 415.~~

28 (6)(10)(a) A nurse registry may refer for contract in
29 private residences registered nurses and licensed practical
30 nurses registered and licensed under part I of chapter 464,
31 certified nursing assistants certified under part II of

1 chapter 464, home health aides who present documented proof of
2 successful completion of the training required by rule of the
3 agency, and companions or homemakers for the purposes of
4 providing those services authorized under s. 400.509(1). Each
5 person referred by a nurse registry must provide current
6 documentation that he or she is free from communicable
7 diseases.

8 (b) A certified nursing assistant or home health aide
9 may be referred for a contract to provide care to a patient in
10 his or her home only if that patient is under a physician's
11 care. A certified nursing assistant or home health aide
12 referred for contract in a private residence shall be limited
13 to assisting a patient with bathing, dressing, toileting,
14 grooming, eating, physical transfer, and those normal daily
15 routines the patient could perform for himself or herself were
16 he or she physically capable. A certified nursing assistant or
17 home health aide may not provide medical or other health care
18 services that require specialized training and that may be
19 performed only by licensed health care professionals. The
20 nurse registry shall obtain the name and address of the
21 attending physician and send written notification to the
22 physician within 48 hours after a contract is concluded that a
23 certified nursing assistant or home health aide will be
24 providing care for that patient.

25 (c) When a certified nursing assistant or home health
26 aide is referred to a patient's home by a nurse registry, the
27 nurse registry shall advise the patient, the patient's family,
28 or any other person acting on behalf of the patient at the
29 time the contract for services is made that registered nurses
30 are available to make visits to the patient's home for an
31 additional cost.

1 ~~(7)~~(11) A person who is referred by a nurse registry
2 for contract in private residences and who is not a nurse
3 licensed under part I of chapter 464 may perform only those
4 services or care to clients that the person has been certified
5 to perform or trained to perform as required by law or rules
6 of the Agency for Health Care Administration or the Department
7 of Business and Professional Regulation. Providing services
8 beyond the scope authorized under this subsection constitutes
9 the unauthorized practice of medicine or a violation of the
10 Nurse Practice Act and is punishable as provided under chapter
11 458, chapter 459, or part I of chapter 464.

12 ~~(8)~~(12) Each nurse registry must require every
13 applicant for contract to complete an application form
14 providing the following information:

15 (a) The name, address, date of birth, and social
16 security number of the applicant.

17 (b) The educational background and employment history
18 of the applicant.

19 (c) The number and date of the applicable license or
20 certification.

21 (d) When appropriate, information concerning the
22 renewal of the applicable license, registration, or
23 certification.

24 ~~(9)~~(13) Each nurse registry must comply with the
25 procedures set forth in s. 400.512 for maintaining records of
26 the work history of all persons referred for contract and is
27 subject to the standards and conditions set forth in that
28 section. However, an initial screening may not be required for
29 persons who have been continuously registered with the nurse
30 registry since October 1, 2000.

31

1 ~~(10)~~~~(14)~~ The nurse registry must maintain the
2 application on file, and that file must be open to the
3 inspection of the Agency for Health Care Administration. The
4 nurse registry must maintain on file the name and address of
5 the patient or client to whom nurse registry personnel are
6 referred for contract and the amount of the fee received by
7 the nurse registry. A nurse registry must maintain the file
8 that includes the application and other applicable
9 documentation for 3 years after the date of the last file
10 entry of patient-related or client-related information.

11 ~~(11)~~~~(15)~~ Nurse registries shall assist persons who
12 would need assistance and sheltering during evacuations
13 because of physical, mental, or sensory disabilities in
14 registering with the appropriate local emergency management
15 agency pursuant to s. 252.355.

16 ~~(12)~~~~(16)~~ Each nurse registry shall prepare and
17 maintain a comprehensive emergency management plan that is
18 consistent with the criteria in this subsection and with the
19 local special needs plan. The plan shall be updated annually.
20 The plan shall include the means by which the nurse registry
21 will continue to provide the same type and quantity of
22 services to its patients who evacuate to special needs
23 shelters which were being provided to those patients prior to
24 evacuation. The plan shall specify how the nurse registry
25 shall facilitate the provision of continuous care by persons
26 referred for contract to persons who are registered pursuant
27 to s. 252.355 during an emergency that interrupts the
28 provision of care or services in private residences
29 ~~residencies~~. Nurse registries may establish links to local
30 emergency operations centers to determine a mechanism by which
31 to approach specific areas within a disaster area in order for

1 a provider to reach its clients. Nurse registries shall
2 demonstrate a good faith effort to comply with the
3 requirements of this subsection by documenting attempts of
4 staff to follow procedures outlined in the nurse registry's
5 comprehensive emergency management plan which support a
6 finding that the provision of continuing care has been
7 attempted for patients identified as needing care by the nurse
8 registry and registered under s. 252.355 in the event of an
9 emergency under subsection (1).

10 (a) All persons referred for contract who care for
11 persons registered pursuant to s. 252.355 must include in the
12 patient record a description of how care will be continued
13 during a disaster or emergency that interrupts the provision
14 of care in the patient's home. It shall be the responsibility
15 of the person referred for contract to ensure that continuous
16 care is provided.

17 (b) Each nurse registry shall maintain a current
18 prioritized list of patients in private residences who are
19 registered pursuant to s. 252.355 and are under the care of
20 persons referred for contract and who need continued services
21 during an emergency. This list shall indicate, for each
22 patient, if the client is to be transported to a special needs
23 shelter and if the patient is receiving skilled nursing
24 services. Nurse registries shall make this list available to
25 county health departments and to local emergency management
26 agencies upon request.

27 (c) Each person referred for contract who is caring
28 for a patient who is registered pursuant to s. 252.355 shall
29 provide a list of the patient's medication and equipment needs
30 to the nurse registry. Each person referred for contract shall
31

1 make this information available to county health departments
2 and to local emergency management agencies upon request.

3 (d) Each person referred for contract shall not be
4 required to continue to provide care to patients in emergency
5 situations that are beyond the person's control and that make
6 it impossible to provide services, such as when roads are
7 impassable or when patients do not go to the location
8 specified in their patient records.

9 (e) The comprehensive emergency management plan
10 required by this subsection is subject to review and approval
11 by the county health department. During its review, the county
12 health department shall contact state and local health and
13 medical stakeholders when necessary. The county health
14 department shall complete its review to ensure that the plan
15 complies with the criteria in the Agency for Health Care
16 Administration rules within 90 days after receipt of the plan
17 and shall either approve the plan or advise the nurse registry
18 of necessary revisions. If a nurse registry fails to submit a
19 plan or fails to submit requested information or revisions to
20 the county health department within 30 days after written
21 notification from the county health department, the county
22 health department shall notify the Agency for Health Care
23 Administration. The agency shall notify the nurse registry
24 that its failure constitutes a deficiency, subject to a fine
25 of \$5,000 per occurrence. If the plan is not submitted,
26 information is not provided, or revisions are not made as
27 requested, the agency may impose the fine.

28 (f) The Agency for Health Care Administration shall
29 adopt rules establishing minimum criteria for the
30 comprehensive emergency management plan and plan updates
31 required by this subsection, with the concurrence of the

1 Department of Health and in consultation with the Department
2 of Community Affairs.

3 ~~(13)~~(17) All persons referred for contract in private
4 residences by a nurse registry must comply with the following
5 requirements for a plan of treatment:

6 (a) When, in accordance with the privileges and
7 restrictions imposed upon a nurse under part I of chapter 464,
8 the delivery of care to a patient is under the direction or
9 supervision of a physician or when a physician is responsible
10 for the medical care of the patient, a medical plan of
11 treatment must be established for each patient receiving care
12 or treatment provided by a licensed nurse in the home. The
13 original medical plan of treatment must be timely signed by
14 the physician, physician assistant, or advanced registered
15 nurse practitioner, acting within his or her respective scope
16 of practice, and reviewed in consultation with the licensed
17 nurse at least every 2 months. Any additional order or change
18 in orders must be obtained from the physician, physician
19 assistant, or advanced registered nurse practitioner and
20 reduced to writing and timely signed by the physician,
21 physician assistant, or advanced registered nurse
22 practitioner. The delivery of care under a medical plan of
23 treatment must be substantiated by the appropriate nursing
24 notes or documentation made by the nurse in compliance with
25 nursing practices established under part I of chapter 464.

26 (b) Whenever a medical plan of treatment is
27 established for a patient, the initial medical plan of
28 treatment, any amendment to the plan, additional order or
29 change in orders, and copy of nursing notes must be filed in
30 the office of the nurse registry.

31

1 ~~(14)(18)~~ The nurse registry must comply with the
2 notice requirements of s. 408.810(5) ~~s. 400.495~~, relating to
3 abuse reporting.

4 ~~(15)(19)~~ In addition to any other penalties imposed
5 pursuant to this section or part, the agency may assess costs
6 related to an investigation that results in a successful
7 prosecution, excluding costs associated with an attorney's
8 time. ~~If the agency imposes such an assessment and the
9 assessment is not paid, and if challenged is not the subject
10 of a pending appeal, prior to the renewal of the license, the
11 license shall not be issued until the assessment is paid or
12 arrangements for payment of the assessment are made.~~

13 ~~(16)(20)~~ The Agency for Health Care Administration
14 shall adopt rules to implement this section and part II of
15 chapter 408.

16 Section 81. Section 400.509, Florida Statutes, is
17 amended to read:

18 400.509 Registration of particular service providers
19 exempt from licensure; certificate of registration; regulation
20 of registrants.--

21 (1) Any organization that provides companion services
22 or homemaker services and does not provide a home health
23 service to a person is exempt from licensure under this part.
24 However, any organization that provides companion services or
25 homemaker services must register with the agency.

26 (2) The requirements of part II of chapter 408 apply
27 to the provision of services that require registration or
28 licensure pursuant to this section and part II of chapter 408
29 and entities registered by or applying for such registration
30 from the Agency for Health Care Administration pursuant to
31 this section. Each applicant for registration and each

1 registrant must comply with all provisions of part II of
2 chapter 408. Registration or a license issued by the agency is
3 required for the operation of an organization that provides
4 companion services or homemaker services. Registration
5 ~~consists of annually filing with the agency, under oath, on~~
6 ~~forms provided by it, the following information:~~

7 ~~(a) If the registrant is a firm or partnership, the~~
8 ~~name, address, date of birth, and social security number of~~
9 ~~every member.~~

10 ~~(b) If the registrant is a corporation or association,~~
11 ~~its name and address; the name, address, date of birth, and~~
12 ~~social security number of each of its directors and officers;~~
13 ~~and the name and address of each person having at least a 5~~
14 ~~percent interest in the corporation or association.~~

15 ~~(c) The name, address, date of birth, and social~~
16 ~~security number of each person employed by or under contract~~
17 ~~with the organization.~~

18 (3) In accordance with s. 408.805, applicants and
19 registrants shall pay fees for all registrations issued under
20 this part, part II of chapter 408, and applicable rules. The
21 amount of the fee shall be \$50 per biennium. The agency shall
22 ~~charge a registration fee of \$25 to be submitted with the~~
23 ~~information required under subsection (2).~~

24 ~~(4) Each applicant for registration must comply with~~
25 ~~the following requirements:~~

26 ~~(a) Upon receipt of a completed, signed, and dated~~
27 ~~application, the agency shall require background screening, in~~
28 ~~accordance with the level 1 standards for screening set forth~~
29 ~~in chapter 435, of every individual who will have contact with~~
30 ~~the client. The agency shall require background screening of~~
31 ~~the managing employee or other similarly titled individual who~~

1 ~~is 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 client services in accordance with the~~
5 ~~level 2 standards for background screening as set forth in~~
6 ~~chapter 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 ~~abuse registry background check through the agency and the~~
22 ~~Department of Law Enforcement background check, but the agency~~
23 ~~has not yet received background screening results from the~~
24 ~~Federal Bureau of Investigation. A standard registration may~~
25 ~~be granted to the applicant upon the agency's receipt of a~~
26 ~~report of the results of the Federal Bureau of Investigation~~
27 ~~background screening for each individual required by this~~
28 ~~section to undergo background screening which confirms that~~
29 ~~all standards have been met, or upon the granting of a~~
30 ~~disqualification exemption by the agency as set forth in~~
31 ~~chapter 435. Any other person who is required to undergo level~~

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

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

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

31

1 ~~relationship to the corporation satisfies the requirements of~~
2 ~~this paragraph.~~

3 ~~(g) A registration may not be granted to an applicant~~
4 ~~if the applicant or managing employee has been found guilty~~
5 ~~of, 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 registration of~~
11 ~~any applicant who:~~

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

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

19 ~~(i) An application for licensure renewal must contain~~
20 ~~the information required under paragraphs (c) and (f).~~

21 ~~(4)(5)~~ Each registrant must obtain the employment or
22 contract history of persons who are employed by or under
23 contract with the organization and who will have contact at
24 any time with patients or clients in their homes by:

25 (a) Requiring such persons to submit an employment or
26 contractual history to the registrant; and

27 (b) Verifying the employment or contractual history,
28 unless through diligent efforts such verification is not
29 possible. The agency shall prescribe by rule the minimum
30 requirements for establishing that diligent efforts have been
31 made.

1
2 There is no monetary liability on the part of, and no cause of
3 action for damages arises against, a former employer of a
4 prospective employee of or prospective independent contractor
5 with a registrant who reasonably and in good faith
6 communicates his or her honest opinions about the former
7 employee's or contractor's job performance. This subsection
8 does not affect the official immunity of an officer or
9 employee of a public corporation.

10 ~~(6) On or before the first day on which services are~~
11 ~~provided to a patient or client, any registrant under this~~
12 ~~part must inform the patient or client and his or her~~
13 ~~immediate family, if appropriate, of the right to report~~
14 ~~abusive, neglectful, or exploitative practices. The statewide~~
15 ~~toll free telephone number for the central abuse hotline must~~
16 ~~be provided to patients or clients in a manner that is clearly~~
17 ~~legible and must include the words: "To report abuse, neglect,~~
18 ~~or exploitation, please call toll free _____ (phone number)."~~
19 ~~Registrants must establish appropriate policies and~~
20 ~~procedures for providing such notice to patients or clients.~~

21 ~~(7) The provisions of s. 400.512 regarding screening~~
22 ~~apply to any person or business entity registered under this~~
23 ~~section on or after October 1, 1994.~~

24 ~~(8) Upon verification that all requirements for~~
25 ~~registration have been met, the Agency for Health Care~~
26 ~~Administration shall issue a certificate of registration valid~~
27 ~~for no more than 1 year.~~

28 ~~(9) The Agency for Health Care Administration may~~
29 ~~deny, suspend, or revoke the registration of a person that:~~

30 ~~(a) Fails to comply with this section or applicable~~
31 ~~rules.~~

1 ~~(b) Commits an intentional, reckless, or negligent act~~
2 ~~that materially affects the health or safety of a person~~
3 ~~receiving services.~~

4 ~~(10) The Agency for Health Care Administration may~~
5 ~~institute injunctive proceedings under s. 400.515.~~

6 (5)(11) A person that offers or advertises to the
7 public a service for which registration is required must
8 include in its advertisement the registration number issued by
9 the Agency for Health Care Administration.

10 ~~(12) It is unlawful for a person to offer or advertise~~
11 ~~to the public services, as defined by rule, without obtaining~~
12 ~~a certificate of registration from the Agency for Health Care~~
13 ~~Administration. It is unlawful for any holder of a certificate~~
14 ~~of registration to advertise or hold out to the public that he~~
15 ~~or she holds a certificate of registration for other than that~~
16 ~~for which he or she actually holds a certificate of~~
17 ~~registration. Any person who violates this subsection is~~
18 ~~subject to injunctive proceedings under s. 400.515.~~

19 ~~(13) Any duly authorized officer or employee of the~~
20 ~~Agency for Health Care Administration has the right to make~~
21 ~~such inspections and investigations as are necessary in order~~
22 ~~to respond to complaints or to determine the state of~~
23 ~~compliance with this section and applicable rules.~~

24 ~~(a) If, in responding to a complaint, an officer or~~
25 ~~employee of the Agency for Health Care Administration has~~
26 ~~reason to believe that a crime has been committed, he or she~~
27 ~~shall notify the appropriate law enforcement agency.~~

28 ~~(b) If, in responding to a complaint, an officer or~~
29 ~~employee of the Agency for Health Care Administration has~~
30 ~~reason to believe that abuse, neglect, or exploitation has~~
31

1 ~~occurred, according to the definitions in chapter 415, he or~~
2 ~~she shall file a report under chapter 415.~~

3 ~~(6)(14)~~ In addition to any other penalties imposed
4 pursuant to this section or part, the agency may assess costs
5 related to an investigation that results in a successful
6 prosecution, excluding costs associated with an attorney's
7 time. ~~If the agency imposes such an assessment and the~~
8 ~~assessment is not paid, and if challenged is not the subject~~
9 ~~of a pending appeal, prior to the renewal of the registration,~~
10 ~~the registration shall not be issued until the assessment is~~
11 ~~paid or arrangements for payment of the assessment are made.~~

12 ~~(7)(15)~~ The Agency for Health Care Administration
13 shall adopt rules to administer this section and part II of
14 chapter 408.

15 Section 82. Subsection (7) of section 400.512, Florida
16 Statutes, is amended to read:

17 400.512 Screening of home health agency personnel;
18 nurse registry personnel; and companions and homemakers.--The
19 agency shall require employment or contractor screening as
20 provided in chapter 435, using the level 1 standards for
21 screening set forth in that chapter, for home health agency
22 personnel; persons referred for employment by nurse
23 registries; and persons employed by companion or homemaker
24 services registered under s. 400.509.

25 ~~(7)(a) It is a misdemeanor of the first degree,~~
26 ~~punishable under s. 775.082 or s. 775.083, for any person~~
27 ~~willfully, knowingly, or intentionally to:~~

28 ~~1. Fail, by false statement, misrepresentation,~~
29 ~~impersonation, or other fraudulent means, to disclose in any~~
30 ~~application for voluntary or paid employment a material fact~~
31

1 ~~used in making a determination as to such person's~~
2 ~~qualifications to be an employee under this section;~~

3 ~~2. Operate or attempt to operate an entity licensed or~~
4 ~~registered under this part with persons who do not meet the~~
5 ~~minimum standards for good moral character as contained in~~
6 ~~this section; or~~

7 ~~3. Use information from the criminal records obtained~~
8 ~~under this section for any purpose other than screening that~~
9 ~~person for employment as specified in this section or release~~
10 ~~such information to any other person for any purpose other~~
11 ~~than screening for employment under this section.~~

12 ~~(b) It is a felony of the third degree, punishable~~
13 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
14 ~~willfully, knowingly, or intentionally to use information from~~
15 ~~the juvenile records of a person obtained under this section~~
16 ~~for any purpose other than screening for employment under this~~
17 ~~section.~~

18 Section 83. Section 400.515, Florida Statutes, is
19 repealed.

20 Section 84. Section 400.602, Florida Statutes, is
21 amended to read:

22 400.602 Licensure required; prohibited acts;
23 exemptions; display, transferability of license.--

24 (1)(a) The requirements of part II of chapter 408
25 apply to the provision of services that require licensure
26 pursuant to this part and part II of chapter 408 and to
27 entities licensed by or applying for such licensure from the
28 agency pursuant to this part. A license issued by the agency
29 is required in order to operate a hospice in this state ~~It is~~
30 ~~unlawful to operate or maintain a hospice without first~~
31 ~~obtaining a license from the agency.~~

1 ~~(b)~~ ~~It is unlawful for~~ Any person or legal entity that
2 is not licensed as a hospice under this part may not ~~to~~ use
3 the word "hospice" in its name, or ~~to~~ offer or advertise
4 hospice services or hospice-like services in such a way as to
5 mislead a person to believe that the offeror is a hospice
6 licensed under this part.

7 ~~(b)(c)~~ It is unlawful for any person or legal entity
8 offering, describing, or advertising hospice services or
9 hospice-like services or otherwise holding itself out as a
10 hospice to do so without stating the year of initial licensure
11 as a hospice in the state or the year of initial licensure of
12 the hospice entity or affiliate based in the state that owns
13 the hospice. At a minimum, the year of initial licensure must
14 be stated directly beneath the name of the licensed entity in
15 a type no less than 25 percent of the size of the type used
16 for the name or other indication of hospice services or
17 hospice-like services and must be prominently stated at least
18 one time on any document, item, or other medium offering,
19 describing, or advertising hospice services or hospice-like
20 services. This requirement excludes any materials relating to
21 the care and treatment of an existing hospice patient.

22 (2) Services provided by a hospital, nursing home, or
23 other health care facility, health care provider, or
24 caregiver, or under the Community Care for the Elderly Act, do
25 not constitute a hospice unless the facility, provider, or
26 caregiver establishes a separate and distinct administrative
27 program to provide home, residential, and homelike inpatient
28 hospice services.

29 (3)(a) A separately licensed hospice may not use a
30 name which is substantially the same as the name of another
31 hospice licensed under this part.

1 (b) A licensed hospice which intends to change its
2 name or address must notify the agency at least 60 days before
3 making the change.

4 ~~(4) The license shall be displayed in a conspicuous~~
5 ~~place inside the hospice program office; shall be valid only~~
6 ~~in the possession of the person or public agency to which it~~
7 ~~is issued; shall not be subject to sale, assignment, or other~~
8 ~~transfer, voluntary or involuntary; and shall not be valid for~~
9 ~~any hospice other than the hospice for which originally~~
10 ~~issued.~~

11 Section 85. Section 400.605, Florida Statutes, is
12 amended to read:

13 400.605 Administration; forms; fees; rules;
14 inspections; fines.--

15 (1) The agency, in consultation with the department,
16 may adopt rules to administer the requirements of part II of
17 chapter 408. The department, in consultation with the agency,
18 shall by rule establish minimum standards and procedures for a
19 hospice pursuant to this part. The rules must include:

20 ~~(a) License application procedures and requirements.~~

21 (a)(b) The qualifications of professional and
22 ancillary personnel to ensure the provision of appropriate and
23 adequate hospice care.

24 (b)(c) Standards and procedures for the administrative
25 management of a hospice.

26 (c)(d) Standards for hospice services that ensure the
27 provision of quality patient care.

28 (d)(e) Components of a patient plan of care.

29 (e)(f) Procedures relating to the implementation of
30 advanced directives and do-not-resuscitate orders.

31

1 ~~(f)(g)~~ Procedures for maintaining and ensuring
2 confidentiality of patient records.

3 ~~(g)(h)~~ Standards for hospice care provided in
4 freestanding inpatient facilities that are not otherwise
5 licensed medical facilities and in residential care facilities
6 such as nursing homes, assisted living facilities, adult
7 family care homes, and hospice residential units and
8 facilities.

9 ~~(h)(i)~~ Components of a comprehensive emergency
10 management plan, developed in consultation with the Department
11 of Health, the Department of Elderly Affairs, and the
12 Department of Community Affairs.

13 ~~(i)(j)~~ Standards and procedures relating to the
14 establishment and activities of a quality assurance and
15 utilization review committee.

16 ~~(j)(k)~~ Components and procedures relating to the
17 collection of patient demographic data and other information
18 on the provision of hospice care in this state.

19 (2) In accordance with s. 408.805, an applicant or
20 licensee shall pay a fee for each license application
21 submitted under this part, part II of chapter 408, and
22 applicable rules. The amount of the fee shall be established
23 by rule and may not exceed \$1,200 per biennium. The agency
24 ~~shall:~~

25 ~~(a) Prepare and furnish all forms necessary under the~~
26 ~~provisions of this part in relation to applications for~~
27 ~~licensure or licensure renewals.~~

28 ~~(b) Collect from the applicant at the time of filing~~
29 ~~an application for a license or at the time of renewal of a~~
30 ~~license a fee which must be reasonably calculated to cover the~~
31 ~~cost of regulation under this part, but may not exceed \$600~~

1 ~~per program. All fees collected under this part shall be~~
2 ~~deposited in the Health Care Trust Fund for the administration~~
3 ~~of this part.~~

4 ~~(c) Issue hospice licenses to all applicants which~~
5 ~~meet the provisions of this part and applicable rules.~~

6 (3)(d) In accordance with s. 408.811, the agency shall
7 conduct annual licensure inspections of all licensees, except
8 that licensure inspections may be conducted biennially for
9 hospices having a 3-year record of substantial compliance.

10 (e) The agency shall conduct such inspections and
11 investigations as are necessary in order to determine the
12 state of compliance with the provisions of this part, part II
13 of chapter 408, and applicable adopted rules. The right of
14 inspection also extends to any program that the agency has
15 reason to believe is offering or advertising itself as a
16 hospice without a license, but no inspection may be made
17 without the permission of the owner or person in charge
18 thereof unless a warrant is first obtained from a circuit
19 court authorizing such inspection. An application for a
20 license or license renewal made pursuant to this part
21 constitutes permission for an inspection of the hospice for
22 which the license is sought in order to facilitate
23 verification of the information submitted on or in connection
24 with the application.

25 (4)(f) In accordance with part II of chapter 408, the
26 agency may impose an administrative fine for any violation of
27 the provisions of this part, part II of chapter 408, or
28 applicable rules.

29 Section 86. Section 400.606, Florida Statutes, is
30 amended to read:

31

1 400.606 License; application; renewal; conditional
2 license or permit; certificate of need.--

3 (1) In addition to the requirements of part II of
4 chapter 408, A license application must be filed on a form
5 ~~provided by the agency and must be accompanied by the~~
6 ~~appropriate license fee as well as satisfactory proof that the~~
7 ~~hospice is in compliance with this part and any rules adopted~~
8 ~~by the department and proof of financial ability to operate~~
9 ~~and conduct the hospice in accordance with the requirements of~~
10 ~~this part.~~ the initial application and change of ownership
11 application must be accompanied by a plan for the delivery of
12 home, residential, and homelike inpatient hospice services to
13 terminally ill persons and their families. Such plan must
14 contain, but need not be limited to:

15 (a) The estimated average number of terminally ill
16 persons to be served monthly.

17 (b) The geographic area in which hospice services will
18 be available.

19 (c) A listing of services which are or will be
20 provided, either directly by the applicant or through
21 contractual arrangements with existing providers.

22 (d) Provisions for the implementation of hospice home
23 care within 3 months after licensure.

24 (e) Provisions for the implementation of hospice
25 homelike inpatient care within 12 months after licensure.

26 (f) The number and disciplines of professional staff
27 to be employed.

28 (g) The name and qualifications of any existing or
29 potential contractee.

30 (h) A plan for attracting and training volunteers.
31

1 (i) The projected annual operating cost of the
2 hospice.

3 ~~(j) A statement of financial resources and personnel
4 available to the applicant to deliver hospice care.~~

5
6 If the applicant is an existing licensed health care provider,
7 the application must be accompanied by a copy of the most
8 recent profit-loss statement and, if applicable, the most
9 recent licensure inspection report.

10 ~~(2) Each applicant must submit to the agency with its
11 application a description and explanation of any exclusions,
12 permanent suspensions, or terminations from the Medicaid or
13 Medicare programs of the owner, if an individual; of any
14 officer or board member of the hospice, if the owner is a
15 firm, corporation, partnership, or association; or of any
16 person owning 5 percent or more of the hospice. Proof of
17 compliance with disclosure of ownership and control interest
18 requirements of the Medicaid or Medicare programs may be
19 accepted in lieu of this submission.~~

20 ~~(2)(3) In addition to the requirements of part II of
21 chapter 408, A license issued for the operation of a hospice,
22 unless sooner suspended or revoked, shall expire automatically
23 1 year from the date of issuance. Sixty days prior to the
24 expiration date, a hospice wishing to renew its license shall
25 submit an application for renewal to the agency on forms
26 furnished by the agency. The agency shall renew the license if
27 the applicant has first met the requirements established under
28 this part and all applicable rules and has provided the
29 information described under this section in addition to the
30 application. However, the application for license renewal
31 shall be accompanied by an update of the plan for delivery of~~

1 hospice care only if information contained in the plan
2 submitted pursuant to subsection (1) is no longer applicable.

3 ~~(4) A hospice against which a revocation or suspension~~
4 ~~proceeding is pending at the time of license renewal may be~~
5 ~~issued a conditional license by the agency effective until~~
6 ~~final disposition of such proceeding. If judicial relief is~~
7 ~~sought from the final agency action, the court having~~
8 ~~jurisdiction may issue a conditional permit for the duration~~
9 ~~of the judicial proceeding.~~

10 (3)(5) The agency shall not issue a license to a
11 hospice that fails to receive a certificate of need under the
12 provisions of part I of chapter 408 ss. 408.031-408.045. A
13 licensed hospice is a health care facility as that term is
14 used in s. 408.039(5) and is entitled to initiate or intervene
15 in an administrative hearing.

16 (4)(6) A freestanding hospice facility that is
17 primarily engaged in providing inpatient and related services
18 and that is not otherwise licensed as a health care facility
19 shall be required to obtain a certificate of need. However, a
20 freestanding hospice facility with six or fewer beds shall not
21 be required to comply with institutional standards such as,
22 but not limited to, standards requiring sprinkler systems,
23 emergency electrical systems, or special lavatory devices.

24 (5)(7) The agency may deny a license to an applicant
25 that fails to meet any condition for the provision of hospice
26 care or services imposed by the agency on a certificate of
27 need by final agency action, unless the applicant can
28 demonstrate that good cause exists for the applicant's failure
29 to meet such condition.

30 Section 87. Section 400.6065, Florida Statutes, is
31 amended to read:

1 400.6065 Background screening.--
2 ~~(1) Upon receipt of a completed application under s.~~
3 ~~400.606, the agency shall require level 2 background screening~~
4 ~~on each of the following persons, who shall be considered~~
5 ~~employees for the purposes of conducting screening under~~
6 ~~chapter 435:~~
7 ~~(a) The hospice administrator and financial officer.~~
8 ~~(b) An officer or board member if the hospice is a~~
9 ~~firm, corporation, partnership, or association, or any person~~
10 ~~owning 5 percent or more of the hospice if the agency has~~
11 ~~probable cause to believe that such officer, board member, or~~
12 ~~owner has been convicted of any offense prohibited by s.~~
13 ~~435.04. For each officer, board member, or person owning 5~~
14 ~~percent or more who has been convicted of any such offense,~~
15 ~~the hospice shall submit to the agency a description and~~
16 ~~explanation of the conviction at the time of license~~
17 ~~application. This paragraph does not apply to a board member~~
18 ~~of a not for profit corporation or organization if the board~~
19 ~~member serves solely in a voluntary capacity, does not~~
20 ~~regularly take part in the day to day operational decisions of~~
21 ~~the corporation or organization, receives no remuneration for~~
22 ~~his or her services, and has no financial interest and has no~~
23 ~~family members with a financial interest in the corporation or~~
24 ~~organization, provided that the board member and the~~
25 ~~corporation or organization submit a statement affirming that~~
26 ~~the board member's relationship to the corporation or~~
27 ~~organization satisfies the requirements of this paragraph.~~
28 ~~(2) Proof of compliance with level 2 screening~~
29 ~~standards which has been submitted within the previous 5 years~~
30 ~~to meet any facility or professional licensure requirements of~~
31

1 ~~the agency or the Department of Health satisfies the~~
2 ~~requirements of this section.~~

3 ~~(3) The agency may grant a provisional license to a~~
4 ~~hospice applying for an initial license when each individual~~
5 ~~required by this section to undergo screening has completed~~
6 ~~the Department of Law Enforcement background check, but has~~
7 ~~not yet received results from the Federal Bureau of~~
8 ~~Investigation.~~

9 (4) The agency shall require employment or contractor
10 screening as provided in chapter 435, using the level 1
11 standards for screening set forth in that chapter, for hospice
12 personnel.

13 ~~(5) The agency may grant exemptions from~~
14 ~~disqualification from employment under this section as~~
15 ~~provided in s. 435.07.~~

16 ~~(6) The administration of each hospice must sign an~~
17 ~~affidavit annually, under penalty of perjury, stating that all~~
18 ~~personnel employed or contracted with on or after October 1,~~
19 ~~1998, who provide hospice services in a facility, or who enter~~
20 ~~the home of a patient in their service capacity, have been~~
21 ~~screened.~~

22 ~~(7) Proof of compliance with the screening~~
23 ~~requirements of chapter 435 shall be accepted in lieu of the~~
24 ~~requirements of this section if the person has been~~
25 ~~continuously employed or registered without a breach in~~
26 ~~service that exceeds 180 days, the proof of compliance is not~~
27 ~~more than 2 years old, and the person has been screened, at~~
28 ~~the discretion of the hospice.~~

29 ~~(8)(a) It is a misdemeanor of the first degree,~~
30 ~~punishable under s. 775.082 or s. 775.083, for any person~~
31 ~~willfully, knowingly, or intentionally to:~~

1 1. ~~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 such person's~~
5 ~~qualifications to be employed or contracted with under this~~
6 ~~section;~~

7 2. ~~Operate or attempt to operate an entity licensed~~
8 ~~under this part with persons who do not meet the minimum~~
9 ~~standards for good moral character as contained in this~~
10 ~~section; or~~

11 3. ~~Use information from the criminal records obtained~~
12 ~~under this section for any purpose other than screening as~~
13 ~~specified in this section, or release such information to any~~
14 ~~other person for any purpose other than screening under this~~
15 ~~section.~~

16 (b) ~~It is a felony of the third degree, punishable~~
17 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
18 ~~willfully, knowingly, or intentionally to use information from~~
19 ~~the juvenile records of a person obtained under this section~~
20 ~~for any purpose other than screening for employment under this~~
21 ~~section.~~

22 Section 88. Section 400.607, Florida Statutes, is
23 amended to read:

24 400.607 Denial, suspension, ~~or~~ revocation of license;
25 emergency actions; imposition of administrative fine; grounds~~+~~
26 ~~injunctions.--~~

27 (1) The agency may deny, revoke, and ~~or~~ suspend a
28 license, impose an action under s. 408.814, and ~~or~~ impose an
29 administrative fine, which may not exceed \$5,000 per
30 violation, for the violation of any provision of this part,
31

1 ~~part II of chapter 408, or applicable rules in the manner~~
2 ~~provided in chapter 120.~~

3 (2) Any of the following actions by a licensed hospice
4 or any of its employees shall be grounds for action by the
5 agency against a hospice:

6 (a) A violation of the provisions of this part, part
7 II of chapter 408, or applicable rules.

8 (b) An intentional or negligent act materially
9 affecting the health or safety of a patient.

10 ~~(3) The agency may deny or revoke a license upon a~~
11 ~~determination that:~~

12 ~~(a) Persons subject to level 2 background screening~~
13 ~~under s. 400.6065 do not meet the screening standards of s.~~
14 ~~435.04, and exemptions from disqualification have not been~~
15 ~~provided by the agency.~~

16 ~~(b) An officer, board member, or person owning 5~~
17 ~~percent or more of the hospice has been excluded, permanently~~
18 ~~suspended, or terminated from the Medicare or Medicaid~~
19 ~~programs.~~

20 (3)(4) If, 3 months after the date of obtaining a
21 license, or at any time thereafter, a hospice does not have in
22 operation the home-care component of hospice care, the agency
23 shall immediately revoke the license of such hospice.

24 (4)(5) If, 12 months after the date of obtaining a
25 license pursuant to s. 400.606, or at any time thereafter, a
26 hospice does not have in operation the inpatient components of
27 hospice care, the agency shall immediately revoke the license
28 of such hospice.

29 ~~(6) The agency may institute a civil action in a court~~
30 ~~of competent jurisdiction to seek injunctive relief to enforce~~
31

1 ~~compliance with this part or any rule adopted pursuant to this~~
2 ~~part.~~

3 ~~(5)(7)~~ The remedies set forth in this section are
4 independent of and cumulative to other remedies provided by
5 law.

6 Section 89. Subsection (8) of section 400.6095,
7 Florida Statutes, is amended to read:

8 400.6095 Patient admission; assessment; plan of care;
9 discharge; death.--

10 (8) The hospice care team may withhold or withdraw
11 cardiopulmonary resuscitation if presented with an order not
12 to resuscitate executed pursuant to s. 401.45. The department
13 shall adopt rules providing for the implementation of such
14 orders. Hospice staff shall not be subject to criminal
15 prosecution or civil liability, nor be considered to have
16 engaged in negligent or unprofessional conduct, for
17 withholding or withdrawing cardiopulmonary resuscitation
18 pursuant to such an order and applicable rules ~~adopted by the~~
19 ~~department~~. The absence of an order to resuscitate executed
20 pursuant to s. 401.45 does not preclude a physician from
21 withholding or withdrawing cardiopulmonary resuscitation as
22 otherwise permitted by law.

23 Section 90. Section 400.801, Florida Statutes, is
24 amended to read:

25 400.801 Homes for special services.--

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

27 (a) "Agency" means the "Agency for Health Care
28 Administration."

29 (b) "Home for special services" means a site licensed
30 by the agency prior to January 1, 2006, where specialized
31

1 health care services are provided, including personal and
2 custodial care, but not continuous nursing services.

3 (2) The requirements of part II of chapter 408 apply
4 to the provision of services that require licensure pursuant
5 to this section and part II of chapter 408 and entities
6 licensed by or applying for such licensure from the agency
7 pursuant to this section. A license issued by the agency is
8 required in order to operate a home for special services in
9 this state. A person must obtain a license from the agency to
10 operate a home for special services. A license is valid for 1
11 year.

12 (3) In accordance with s. 408.805, an applicant or
13 licensee shall pay a fee for each license application
14 submitted under this part, part II of chapter 408, and
15 applicable rules. The amount of the fee shall be established
16 by rule and may not be more than \$2,000 per biennium. The
17 application for a license under this section must be made on a
18 form provided by the agency. A nonrefundable license fee of
19 not more than \$1,000 must be submitted with the license
20 application.

21 (4) ~~Each applicant for licensure must comply with the~~
22 ~~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 daily operation~~
28 ~~of the facility, and of the financial officer, or other~~
29 ~~similarly titled individual who is responsible for the~~
30 ~~financial operation of the facility, including billings for~~
31 ~~client care and services, in accordance with the level 2~~

1 ~~standards for screening set forth in chapter 435. The~~
2 ~~applicant must comply with the procedures for level 2~~
3 ~~background screening as set forth in chapter 435.~~

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

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

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

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

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

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

31

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

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

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

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

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

19 ~~(5) Application for license renewal must be submitted~~
20 ~~90 days before the expiration of the license.~~

21 ~~(6) A change of ownership or control of a home for~~
22 ~~special services must be reported to the agency in writing at~~
23 ~~least 60 days before the change is scheduled to take effect.~~

24 ~~(4)(7)~~ may shall adopt rules for
25 implementing and enforcing this section and part II of chapter
26 408.

27 ~~(8)(a) It is unlawful for any person to establish,~~
28 ~~conduct, manage, or operate a home for special services~~
29 ~~without obtaining a license from the agency.~~

30 ~~(b) It is unlawful for any person to offer or~~
31 ~~advertise to the public, in any medium whatever, specialized~~

1 ~~health care services without obtaining a license from the~~
2 ~~agency.~~

3 ~~(c) It is unlawful for a holder of a license issued~~
4 ~~under this section to advertise or represent to the public~~
5 ~~that it holds a license for a type of facility other than the~~
6 ~~facility for which its license is issued.~~

7 (5)(9)(a) In addition to the requirements of part II
8 of chapter 408, a violation of any provision of this section,
9 part II of chapter 408, or applicable rules ~~adopted by the~~
10 ~~agency for implementing this section~~ is punishable by payment
11 of an administrative fine not to exceed \$5,000.

12 (b) A violation of s. 408.812 ~~subsection (8)~~ or rules
13 adopted under that section ~~subsection~~ is a misdemeanor of the
14 first degree, punishable as provided in s. 775.082 or s.
15 775.083. Each day of continuing violation is a separate
16 offense.

17 Section 91. Section 400.805, Florida Statutes, is
18 amended to read:

19 400.805 Transitional living facilities.--

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

21 (a) "Agency" means the Agency for Health Care
22 Administration.

23 (b) "Department" means the Department of Health.

24 (c) "Transitional living facility" means a site where
25 specialized health care services are provided, including, but
26 not limited to, rehabilitative services, community reentry
27 training, aids for independent living, and counseling to
28 spinal-cord-injured persons and head-injured persons. This
29 term does not include a hospital licensed under chapter 395 or
30 any federally operated hospital or facility.

31

1 (2)(a) The requirements of part II of chapter 408
2 apply to the provision of services that require licensure
3 pursuant to this section and part II of chapter 408 and to
4 entities licensed by or applying for such licensure from the
5 agency pursuant to this section. A license issued by the
6 agency is required for the operation of a transitional living
7 facility in this state. A person must obtain a license from
8 the agency to operate a transitional living facility. A
9 license issued under this section is valid for 1 year.

10 (b) In accordance with this section, an applicant or a
11 licensee shall pay a fee for each license application
12 submitted under this part, part II of chapter 408, and
13 applicable rules. The fee shall consist of a \$4,000 license
14 fee and a \$78.50 per bed fee per biennium. The application for
15 a license must be made on a form provided by the agency. A
16 nonrefundable license fee of \$2,000 and a fee of up to \$39.25
17 per bed must be submitted with the license application.

18 (c) The agency may not issue a license to an applicant
19 until the agency receives notice from the department as
20 provided in paragraph(3)(6)(b).

21 ~~(3) Each applicant for licensure must comply with the~~
22 ~~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 daily operation~~
28 ~~of the facility, and of the financial officer, or other~~
29 ~~similarly titled individual who is responsible for the~~
30 ~~financial operation of the facility, including billings for~~
31 ~~client care and services. The applicant must comply with the~~

1 ~~procedures for level 2 background screening as set forth in~~
2 ~~chapter 435.~~

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

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

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

1 ~~may not continue to serve if the report indicates any~~
2 ~~violation of background screening standards and a~~
3 ~~disqualification exemption has not been requested of and~~
4 ~~granted by the agency as set forth in chapter 435.~~

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

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

30 ~~(g) A license may not be granted to an applicant if~~
31 ~~the applicant or managing employee has been found guilty of,~~

1 ~~regardless of adjudication, or has entered a plea of nolo~~
2 ~~contendere or guilty to, any offense prohibited under the~~
3 ~~level 2 standards for screening set forth in chapter 435,~~
4 ~~unless an exemption from disqualification has been granted by~~
5 ~~the agency as set forth in chapter 435.~~

6 ~~(h) The agency may deny or revoke licensure if the~~
7 ~~applicant:~~

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

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

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

17 ~~(4) An application for renewal of license must be~~
18 ~~submitted 90 days before the expiration of the license. Upon~~
19 ~~renewal of licensure, each applicant must submit to the~~
20 ~~agency, under penalty of perjury, an affidavit as set forth in~~
21 ~~paragraph (3)(d).~~

22 ~~(5) A change of ownership or control of a transitional~~
23 ~~living facility must be reported to the agency in writing at~~
24 ~~least 60 days before the change is scheduled to take effect.~~

25 (3)(6)(a) The agency shall adopt rules in consultation
26 with the department governing the physical plant of
27 transitional living facilities and the fiscal management of
28 transitional living facilities.

29 (b) The department shall adopt rules in consultation
30 with the agency governing the services provided to clients of
31 transitional living facilities. The department shall enforce

1 all requirements for providing services to the facility's
2 clients. The department must notify the agency when it
3 determines that an applicant for licensure meets the service
4 requirements adopted by the department.

5 (c) The agency and the department shall enforce
6 requirements under this section and part II of chapter 408, as
7 such requirements relate to them respectively, and their
8 respective adopted rules.

9 ~~(7)(a) It is unlawful for any person to establish,~~
10 ~~conduct, manage, or operate a transitional living facility~~
11 ~~without obtaining a license from the agency.~~

12 ~~(b) It is unlawful for any person to offer or~~
13 ~~advertise to the public, in any medium whatever, services or~~
14 ~~care defined in paragraph (1)(c) without obtaining a license~~
15 ~~from the agency.~~

16 ~~(c) It is unlawful for a holder of a license issued~~
17 ~~under this section to advertise or represent to the public~~
18 ~~that it holds a license for a type of facility other than the~~
19 ~~facility for which its license is issued.~~

20 (4)(8) In accordance with s. 408.811, any designated
21 officer or employee of the agency, of the state, or of the
22 local fire marshal may enter unannounced upon and into the
23 premises of any facility licensed under this section in order
24 to determine the state of compliance with this section, part
25 II of chapter 408, and applicable rules ~~and the rules or~~
26 ~~standards in force under this section. The right of entry and~~
27 ~~inspection also extends to any premises that the agency has~~
28 ~~reason to believe are being operated or maintained as a~~
29 ~~facility without a license; but such an entry or inspection~~
30 ~~may not be made without the permission of the owner or person~~
31 ~~in charge of the facility unless a warrant that authorizes the~~

1 ~~entry is first obtained from the circuit court. The warrant~~
2 ~~requirement extends only to a facility that the agency has~~
3 ~~reason to believe is being operated or maintained as a~~
4 ~~facility without a license. An application for a license or~~
5 ~~renewal thereof which is made under this section constitutes~~
6 ~~permission for, and acquiescence in, any entry or inspection~~
7 ~~of the premises for which the license is sought, in order to~~
8 ~~facilitate verification of the information submitted on or in~~
9 ~~connection with the application; to discover, investigate, and~~
10 ~~determine the existence of abuse or neglect; or to elicit,~~
11 ~~receive, respond to, and resolve complaints. A current valid~~
12 ~~license constitutes unconditional permission for, and~~
13 ~~acquiescence in, any entry or inspection of the premises by~~
14 ~~authorized personnel. The agency retains the right of entry~~
15 ~~and inspection of facilities that have had a license revoked~~
16 ~~or suspended within the previous 24 months, to ensure that the~~
17 ~~facility is not operating unlawfully. However, before the~~
18 ~~facility is entered, a statement of probable cause must be~~
19 ~~filed with the director of the agency, who must approve or~~
20 ~~disapprove the action within 48 hours. Probable cause~~
21 ~~includes, but is not limited to, evidence that the facility~~
22 ~~holds itself out to the public as a provider of personal~~
23 ~~assistance services, or the receipt by the advisory council on~~
24 ~~brain and spinal cord injuries of a complaint about the~~
25 ~~facility.~~

26 ~~(9) The agency may institute injunctive proceedings in~~
27 ~~a court of competent jurisdiction for temporary or permanent~~
28 ~~relief to:~~

29 ~~(a) Enforce this section or any minimum standard,~~
30 ~~rule, or order issued pursuant thereto if the agency's effort~~
31 ~~to correct a violation through administrative fines has failed~~

1 ~~or when the violation materially affects the health, safety,~~
2 ~~or welfare of residents; or~~

3 ~~(b) Terminate the operation of a facility if a~~
4 ~~violation of this section or of any standard or rule adopted~~
5 ~~pursuant thereto exists which materially affects the health,~~
6 ~~safety, or welfare of residents.~~

7
8 ~~The Legislature recognizes that, in some instances, action is~~
9 ~~necessary to protect residents of facilities from immediately~~
10 ~~life threatening situations. If it appears by competent~~
11 ~~evidence or a sworn, substantiated affidavit that a temporary~~
12 ~~injunction should issue, the court, pending the determination~~
13 ~~on final hearing, shall enjoin operation of the facility.~~

14 ~~(10) The agency may impose an immediate moratorium on~~
15 ~~admissions to a facility when the agency determines that any~~
16 ~~condition in the facility presents a threat to the health,~~
17 ~~safety, or welfare of the residents in the facility. If a~~
18 ~~facility's license is denied, revoked, or suspended, the~~
19 ~~facility may be subject to the immediate imposition of a~~
20 ~~moratorium on admissions to run concurrently with licensure~~
21 ~~denial, revocation, or suspension.~~

22 ~~(5)(11)(a) In accordance with part II of chapter 408,~~
23 ~~a violation of any provision of this section, part II of~~
24 ~~chapter 408, or applicable rules adopted by the agency or~~
25 ~~department under this section is punishable by payment of an~~
26 ~~administrative or a civil penalty fine not to exceed \$5,000.~~

27 ~~(b) Unlicensed activity pursuant to s. 408.812 A~~
28 ~~violation of subsection (7) or rules adopted under that~~
29 ~~subsection is a misdemeanor of the first degree, punishable as~~
30 ~~provided in s. 775.082 or s. 775.083. Each day of a continuing~~
31 ~~violation is a separate offense.~~

1 (6) The agency may adopt rules to administer the
2 requirements of part II of chapter 408.

3 Section 92. Subsection (4) of section 400.902, Florida
4 Statutes, is amended to read:

5 400.902 Definitions.--As used in this part, the term:

6 (4) "Owner or operator" means a licensee ~~any~~
7 ~~individual who has general administrative charge of a PPEC~~
8 ~~center.~~

9 Section 93. Subsection (3) is added to section
10 400.903, Florida Statutes, to read:

11 400.903 PPEC centers to be licensed; exemptions.--

12 (3) The requirements of part II of chapter 408 apply
13 to the provision of services that require licensure pursuant
14 to this part and part II of chapter 408 and to entities
15 licensed by or applying for such licensure from the agency
16 pursuant to this part. A license issued by the agency is
17 required for the operation of a PPEC center in this state.

18 Section 94. Section 400.905, Florida Statutes, is
19 amended to read:

20 400.905 License required; fee; exemption; ~~display~~.--

21 ~~(1)(a) It is unlawful to operate or maintain a PPEC~~
22 ~~center without first obtaining from the agency a license~~
23 ~~authorizing such operation. The agency is responsible for~~
24 ~~licensing PPEC centers in accordance with the provisions of~~
25 ~~this part.~~

26 ~~(b) Any person who violates paragraph (a) is guilty of~~
27 ~~a felony of the third degree, punishable as provided in s.~~
28 ~~775.082, s. 775.083, or s. 775.084.~~

29 ~~(1)(2)~~ In addition to the requirements of part II of
30 chapter 408, separate licenses are required for PPEC centers
31 maintained on separate premises, even though they are operated

1 under the same management. Separate licenses are not required
2 for separate buildings on the same grounds.

3 ~~(2)(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 established
7 by rule and may not be less than \$1,000 or more than \$3,000
8 per biennium. The annual license fee required of a PPEC center
9 shall be in an amount determined by the agency to be
10 sufficient to cover the agency's costs in carrying out its
11 responsibilities under this part, but shall not be less than
12 \$500 or more than \$1,500.

13 ~~(3)(4)~~ County-operated or municipally operated PPEC
14 centers applying for licensure under this part are exempt from
15 the payment of license fees.

16 ~~(5)~~ The license shall be displayed in a conspicuous
17 place inside the PPEC center.

18 ~~(6)~~ A license shall be valid only in the possession of
19 the individual, firm, partnership, association, or corporation
20 to whom it is issued and shall not be subject to sale,
21 assignment, or other transfer, voluntary or involuntary; nor
22 shall a license be valid for any premises other than that for
23 which originally issued.

24 ~~(7)~~ Any license granted by the agency shall state the
25 maximum capacity of the facility, the date the license was
26 issued, the expiration date of the license, and any other
27 information deemed necessary by the agency.

28 Section 95. Section 400.906, Florida Statutes, is
29 amended to read:

30 400.906 Initial application for license; zoning.--
31

1 ~~(1) Application for a license shall be made to the~~
2 ~~agency on forms furnished by it and shall be accompanied by~~
3 ~~the appropriate license fee unless the applicant is exempt~~
4 ~~from payment of the fee as provided in s. 400.905.~~

5 ~~(2) In addition to the requirements of part II of~~
6 ~~chapter 408, the application must shall be under oath and~~
7 ~~shall contain the following:~~

8 ~~(a) The name and address of the applicant and the name~~
9 ~~by which the facility is to be known. Pursuant thereto:~~

10 ~~1. If the applicant is a firm, partnership, or~~
11 ~~association, the application shall contain the name and~~
12 ~~address of every member thereof.~~

13 ~~2. If the applicant is a corporation, the application~~
14 ~~shall contain its name and address, the names and addresses of~~
15 ~~its directors and officers, and the name and address of each~~
16 ~~person having at least a 10 percent interest in the~~
17 ~~corporation.~~

18 ~~(b) Information which provides a source to establish~~
19 ~~the suitable character and competency of the applicant in~~
20 ~~accordance with the provisions of s. 402.305(2) and, if~~
21 ~~applicable, of the owner or operator, including the name and~~
22 ~~address of any licensed facility with which the applicant or~~
23 ~~owner or operator has been affiliated through ownership or~~
24 ~~employment within 5 years of the date of the application for a~~
25 ~~license.~~

26 ~~(c) The names and addresses of other persons of whom~~
27 ~~the agency may inquire as to the character and reputation of~~
28 ~~the applicant and, if applicable, of the owner or operator.~~

29 ~~(d) The names and addresses of other persons of whom~~
30 ~~the agency may inquire as to the financial responsibility of~~
31 ~~the applicant.~~

1 ~~(e) Such other reasonable information as may be~~
2 ~~required by the agency to evaluate the ability of the~~
3 ~~applicant to meet the responsibilities entailed under this~~
4 ~~part.~~

5 ~~(f) The location of the facility for which a license~~
6 ~~is sought and documentation, signed by the appropriate local~~
7 ~~government official, which states that the applicant has met~~
8 ~~local zoning requirements.~~

9 ~~(3) The applicant for licensure shall furnish~~
10 ~~satisfactory proof of financial ability to operate and conduct~~
11 ~~the PPEC center in accordance with the requirements of this~~
12 ~~part.~~

13 ~~(4) The applicant for licensure shall furnish proof of~~
14 ~~adequate liability insurance coverage or protection.~~

15 ~~(5) Each applicant for licensure must comply with the~~
16 ~~following requirements:~~

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

26 ~~(b) The agency may require background screening of any~~
27 ~~other individual who is an applicant if the agency has a~~
28 ~~reasonable basis for believing that he or she has been~~
29 ~~convicted of a crime or has committed any other offense~~
30 ~~prohibited under the level 2 standards for screening set forth~~
31 ~~in chapter 435.~~

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

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

28 ~~(e) Each applicant must submit to the agency, with its~~
29 ~~application, a description and explanation of any exclusions,~~
30 ~~permanent suspensions, or terminations of the applicant from~~
31 ~~the Medicare or Medicaid programs. Proof of compliance with~~

1 ~~the requirements for disclosure of ownership and control~~
2 ~~interests under the Medicaid or Medicare programs shall be~~
3 ~~accepted in lieu of this submission.~~

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

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

29 ~~(h) The agency may deny or revoke licensure if the~~
30 ~~applicant:~~

31

1 1. ~~Has falsely represented a material fact in the~~
2 ~~application required by paragraph (e) or paragraph (f), or has~~
3 ~~omitted any material fact from the application required by~~
4 ~~paragraph (e) or paragraph (f); or~~

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

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

10 Section 96. Section 400.907, Florida Statutes, is
11 amended to read:

12 400.907 Denial, suspension, revocation of licensure;
13 administrative fines; grounds.--

14 (1) In accordance with part II of chapter 408, the
15 agency may deny, revoke, and ~~or~~ suspend a license and ~~or~~
16 impose an administrative fine for the violation of any
17 provision of this part, part II of chapter 408, or applicable
18 rules in the manner provided in chapter 120.

19 (2) Any of the following actions by a PPEC center or
20 its employee is grounds for action by the agency against a
21 PPEC center or its employee:

22 (a) An intentional or negligent act materially
23 affecting the health or safety of children in the PPEC center.

24 (b) A violation of the provisions of this part, part
25 II of chapter 408, or applicable rules ~~or of any standards or~~
26 ~~rules adopted pursuant to this part.~~

27 (c) Multiple and repeated violations of this part or
28 part II of chapter 408 or of minimum standards or rules
29 adopted pursuant to this part or part II of chapter 408.

30
31

1 ~~(3) The agency shall be responsible for all~~
2 ~~investigations and inspections conducted pursuant to this~~
3 ~~part.~~

4 Section 97. Section 400.908, Florida Statutes, is
5 amended to read:

6 400.908 Administrative fines; disposition of fees and
7 fines.--

8 (1)(a) If the agency determines that a PPEC center is
9 ~~being operated without a license or is otherwise not in~~
10 ~~compliance with rules adopted under this part, part II of~~
11 ~~chapter 408, or applicable rules, the agency, notwithstanding~~
12 ~~any other administrative action it takes, shall make a~~
13 ~~reasonable attempt to discuss each violation and recommended~~
14 ~~corrective action with the owner of the PPEC center prior to~~
15 ~~written notification thereof. The agency may request that the~~
16 ~~PPEC center submit a corrective action plan that which~~
17 ~~demonstrates a good faith effort to remedy each violation by a~~
18 ~~specific date, subject to the approval of the agency.~~

19 (b) In accordance with part II of chapter 408, the
20 agency may fine a PPEC center or employee found in violation
21 of ~~rules adopted pursuant to this part, part II of chapter~~
22 ~~408, or applicable rules, in an amount not to exceed \$500 for~~
23 each violation. Such fine may not exceed \$5,000 in the
24 aggregate.

25 (c) The failure to correct a violation by the date set
26 by the agency, or the failure to comply with an approved
27 corrective action plan, is a separate violation for each day
28 such failure continues, unless the agency approves an
29 extension to a specific date.

30 ~~(d) If a PPEC center desires to appeal any agency~~
31 ~~action under this section and the fine is upheld, the violator~~

1 ~~shall pay the fine, plus interest at the legal rate specified~~
2 ~~in s. 687.01, for each day beyond the date set by the agency~~
3 ~~for payment of the fine.~~

4 (2) In determining if a fine is to be imposed and in
5 fixing the amount of any fine, the agency shall consider the
6 following factors:

7 (a) The gravity of the violation, including the
8 probability that death or serious physical or emotional harm
9 to a child will result or has resulted, the severity of the
10 actual or potential harm, and the extent to which the
11 provisions of the applicable statutes or rules were violated.

12 (b) Actions taken by the owner or operator to correct
13 violations.

14 (c) Any previous violations.

15 (d) The financial benefit to the PPEC center of
16 committing or continuing the violation.

17 ~~(3) Fees and fines received by the agency under this~~
18 ~~part shall be deposited in the Health Care Trust Fund created~~
19 ~~in s. 408.16.~~

20 Section 98. Section 400.910, Florida Statutes, is
21 repealed.

22 Section 99. Section 400.911, Florida Statutes, is
23 repealed.

24 Section 100. Section 400.912, Florida Statutes, is
25 amended to read:

26 400.912 Closing of a PPEC center.--

27 ~~(1) Whenever a PPEC center voluntarily discontinues~~
28 ~~operation, it shall, inform the agency in writing at least 30~~
29 ~~days before the discontinuance of operation. The PPEC center~~
30 ~~shall also, at such time, inform each child's legal guardian~~
31 of the fact and the proposed time of such discontinuance.

1 ~~(2) Immediately upon discontinuance of the operation~~
2 ~~of a PPEC center, the owner or operator shall surrender the~~
3 ~~license therefor to the agency and the license shall be~~
4 ~~canceled.~~

5 Section 101. Section 400.913, Florida Statutes, is
6 repealed.

7 Section 102. Subsection (1) of section 400.914,
8 Florida Statutes, is amended to read:

9 400.914 Rules establishing standards.--

10 (1) Pursuant to the intention of the Legislature to
11 provide safe and sanitary facilities and healthful programs,
12 the agency in conjunction with the Division of Children's
13 Medical Services Prevention and Intervention of the Department
14 of Health shall adopt and publish rules to implement the
15 provisions of this part and part II of chapter 408, which
16 shall include reasonable and fair standards. Any conflict
17 between these standards and those that may be set forth in
18 local, county, or city ordinances shall be resolved in favor
19 of those having statewide effect. Such standards shall relate
20 to:

21 (a) The assurance that PPEC services are family
22 centered and provide individualized medical, developmental,
23 and family training services.

24 (b) The maintenance of PPEC centers, not in conflict
25 with the provisions of chapter 553 and based upon the size of
26 the structure and number of children, relating to plumbing,
27 heating, lighting, ventilation, and other building conditions,
28 including adequate space, which will ensure the health,
29 safety, comfort, and protection from fire of the children
30 served.

31

1 (c) The appropriate provisions of the most recent
2 edition of the "Life Safety Code" (NFPA-101) shall be applied.

3 (d) The number and qualifications of all personnel who
4 have responsibility for the care of the children served.

5 (e) All sanitary conditions within the PPEC center and
6 its surroundings, including water supply, sewage disposal,
7 food handling, and general hygiene, and maintenance thereof,
8 which will ensure the health and comfort of children served.

9 (f) Programs and basic services promoting and
10 maintaining the health and development of the children served
11 and meeting the training needs of the children's legal
12 guardians.

13 (g) Supportive, contracted, other operational, and
14 transportation services.

15 (h) Maintenance of appropriate medical records, data,
16 and information relative to the children and programs. Such
17 records shall be maintained in the facility for inspection by
18 the agency.

19 Section 103. Subsection (3) of section 400.915,
20 Florida Statutes, is amended to read:

21 400.915 Construction and renovation;
22 requirements.--The requirements for the construction or
23 renovation of a PPEC center shall comply with:

24 (3) The standards or rules adopted pursuant to this
25 part and part II of chapter 408.

26 Section 104. Section 400.916, Florida Statutes, is
27 amended to read:

28 400.916 Prohibited acts; penalty for violation.--

29 ~~(1) It is unlawful for any person or public body to~~
30 ~~offer or advertise to the public, in any way or by any medium,~~
31 ~~basic services as defined in this part without obtaining a~~

1 ~~valid current license. It is unlawful for any holder of a~~
2 ~~license issued pursuant to this part to advertise or hold out~~
3 ~~to the public that it holds a license for a PPEC center other~~
4 ~~than that for which it actually holds a license.~~

5 ~~(2)~~ Any person who violates s. 408.812 commits the
6 ~~provisions of subsection (1)~~ is guilty of a misdemeanor of the
7 second degree, punishable as provided in s. 775.083. Each day
8 of continuing violation is ~~shall be considered~~ a separate
9 offense.

10 Section 105. Section 400.917, Florida Statutes, is
11 repealed.

12 Section 106. Section 400.925, Florida Statutes, is
13 amended to read:

14 400.925 Definitions.--As used in this part, the term:

15 (1) "Accrediting organizations" means the Joint
16 Commission on Accreditation of Healthcare Organizations or
17 other national accreditation agencies whose standards for
18 accreditation are comparable to those required by this part
19 for licensure.

20 ~~(2) "Affiliated person" means any person who directly~~
21 ~~or indirectly manages, controls, or oversees the operation of~~
22 ~~a corporation or other business entity that is a licensee,~~
23 ~~regardless of whether such person is a partner, shareholder,~~
24 ~~owner, officer, director, agent, or employee of the entity.~~

25 ~~(2)(3)~~ "Agency" means the Agency for Health Care
26 Administration.

27 ~~(4) "Applicant" means an individual applicant in the~~
28 ~~case of a sole proprietorship, or any officer, director,~~
29 ~~agent, managing employee, general manager, or affiliated~~
30 ~~person, or any partner or shareholder having an ownership~~
31

1 ~~interest equal to 5 percent or greater in the corporation,~~
2 ~~partnership, or other business entity.~~

3 (3)~~(5)~~ "Consumer" or "patient" means any person who
4 uses home medical equipment in his or her place of residence.

5 (4)~~(6)~~ "Department" means the Department of Children
6 and Family Services.

7 (5)~~(7)~~ "General manager" means the individual who has
8 the general administrative charge of the premises of a
9 licensed home medical equipment provider.

10 (6)~~(8)~~ "Home medical equipment" includes any product
11 as defined by the Federal Drug Administration's Drugs, Devices
12 and Cosmetics Act, any products reimbursed under the Medicare
13 Part B Durable Medical Equipment benefits, or any products
14 reimbursed under the Florida Medicaid durable medical
15 equipment program. Home medical equipment includes oxygen and
16 related respiratory equipment; manual, motorized, or
17 customized wheelchairs and related seating and positioning,
18 but does not include prosthetics or orthotics or any splints,
19 braces, or aids custom fabricated by a licensed health care
20 practitioner; motorized scooters; personal transfer systems;
21 and specialty beds, for use by a person with a medical need.

22 (7)~~(9)~~ "Home medical equipment provider" means any
23 person or entity that sells or rents or offers to sell or rent
24 to or for a consumer:

25 (a) Any home medical equipment and services; or

26 (b) Home medical equipment that requires any home
27 medical equipment services.

28 (8)~~(10)~~ "Home medical equipment provider personnel"
29 means persons who are employed by or under contract with a
30 home medical equipment provider.

31

1 ~~(9)(11)~~ "Home medical equipment services" means
2 equipment management and consumer instruction, including
3 selection, delivery, setup, and maintenance of equipment, and
4 other related services for the use of home medical equipment
5 in the consumer's regular or temporary place of residence.

6 ~~(12)~~ "Licensee" means the person or entity to whom a
7 license to operate as a home medical equipment provider is
8 issued by the agency.

9 ~~(10)(13)~~ "Life-supporting or life-sustaining
10 equipment" means a device that is essential to, or that yields
11 information that is essential to, the restoration or
12 continuation of a bodily function important to the
13 continuation of human life. Life-supporting or life-sustaining
14 equipment includes apnea monitors, enteral feeding pumps,
15 infusion pumps, portable home dialysis equipment, and
16 ventilator equipment and supplies for all related equipment,
17 including oxygen equipment and related respiratory equipment.

18 ~~(11)(14)~~ "Moratorium" means a mandated temporary
19 cessation or suspension of the sale, rental, or offering of
20 equipment after the imposition of the moratorium, in
21 accordance with part II of chapter 408. Services related to
22 equipment sold or rented prior to the moratorium must be
23 continued without interruption, unless determined ~~deemed~~
24 otherwise by the agency.

25 ~~(15)~~ "Person" means any individual, firm, partnership,
26 corporation, or association.

27 ~~(12)(16)~~ "Premises" means those buildings and
28 equipment which are located at the address of the licensed
29 home medical equipment provider for the provision of home
30 medical equipment services, which are in such reasonable
31

1 proximity as to appear to the public to be a single provider
2 location, and which comply with zoning ordinances.

3 ~~(13)~~~~(17)~~ "Residence" means the consumer's home or
4 place of residence, which may include nursing homes, assisted
5 living facilities, transitional living facilities, adult
6 family-care homes, or other congregate residential facilities.

7 Section 107. Subsections (3) and subsection (6) of
8 section 400.93, Florida Statutes, are amended to read:

9 400.93 Licensure required; exemptions; unlawful acts;
10 penalties.--

11 (3) The requirements of part II of chapter 408 apply
12 to the provision of services that require licensure pursuant
13 to this part and part II of chapter 408 and to entities
14 licensed by or applying for such licensure from the agency
15 pursuant to this part. A license issued by the agency is
16 required in order to provide home medical equipment and
17 services in this state. A home medical equipment provider must
18 be licensed by the agency to operate in this state or to
19 provide home medical equipment and services to consumers in
20 this state. A standard license issued to a home medical
21 equipment provider, unless sooner suspended or revoked,
22 expires 2 years after its effective date.

23 (6)

24 ~~(a) It is unlawful for any person to offer or~~
25 ~~advertise home medical equipment and services to the public~~
26 ~~unless he or she has a valid license under this part or is~~
27 ~~exempted from licensure under subsection (5). It is unlawful~~
28 ~~for any holder of a license issued under this part to~~
29 ~~advertise or indicate to the public that it holds a home~~
30 ~~medical equipment provider license other than the one it has~~
31 ~~been issued.~~

1 ~~(a)(b)~~ A person who violates ~~paragraph (a)~~ is subject
2 ~~to an injunctive proceeding under s. 400.956.~~ A violation of
3 s. 408.812 ~~paragraph (a)~~ is a deceptive and unfair trade
4 practice and constitutes a violation of the Florida Deceptive
5 and Unfair Trade Practices Act.

6 ~~(b)(c)~~ A person who violates s. 408.812 ~~paragraph (a)~~
7 commits a misdemeanor of the second degree, punishable as
8 provided in s. 775.082 or s. 775.083. A person who commits a
9 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 ~~(d)~~ ~~The following penalties shall be imposed for~~
14 ~~operating an unlicensed home medical equipment provider:~~

15 1. ~~Any person or entity who operates an unlicensed~~
16 ~~provider commits a felony of the third degree.~~

17 2. ~~For any person or entity who has received~~
18 ~~government reimbursement for services provided by an~~
19 ~~unlicensed provider, the agency shall make a fraud referral to~~
20 ~~the appropriate government reimbursement program.~~

21 3. ~~For any licensee found to be concurrently operating~~
22 ~~licensed and unlicensed provider premises, the agency may~~
23 ~~impose a fine or moratorium, or revoke existing licenses of~~
24 ~~any or all of the licensee's licensed provider locations until~~
25 ~~such time as the unlicensed provider premises is licensed.~~

26 ~~(e)~~ A provider found to be operating without a license
27 may apply for licensure, and must cease operations until a
28 license is awarded by the agency.

29 Section 108. Section 400.931, Florida Statutes, is
30 amended to read:

31

1 400.931 Application for license; fee; provisional
2 license; temporary permit.--

3 ~~(1) Application for an initial license or for renewal~~
4 ~~of an existing license must be made under oath to the agency~~
5 ~~on forms furnished by it and must be accompanied by the~~
6 ~~appropriate license fee as provided in subsection (12).~~

7 (1)(2) In addition to the requirements of part II of
8 chapter 408, the applicant must file with the application
9 satisfactory proof that the home medical equipment provider is
10 in compliance with this part and applicable rules, including:

11 (a) A report, by category, of the equipment to be
12 provided, indicating those offered either directly by the
13 applicant or through contractual arrangements with existing
14 providers. Categories of equipment include:

- 15 1. Respiratory modalities.
- 16 2. Ambulation aids.
- 17 3. Mobility aids.
- 18 4. Sickroom setup.
- 19 5. Disposables.

20 (b) A report, by category, of the services to be
21 provided, indicating those offered either directly by the
22 applicant or through contractual arrangements with existing
23 providers. Categories of services include:

- 24 1. Intake.
- 25 2. Equipment selection.
- 26 3. Delivery.
- 27 4. Setup and installation.
- 28 5. Patient training.
- 29 6. Ongoing service and maintenance.
- 30 7. Retrieval.

31

1 (c) A listing of those with whom the applicant
2 contracts, both the providers the applicant uses to provide
3 equipment or services to its consumers and the providers for
4 whom the applicant provides services or equipment.

5 ~~(2)(3)~~ As an alternative to submitting proof of
6 financial ability to operate as required in s. 408.810(8) ~~The~~
7 ~~applicant for initial licensure must demonstrate financial~~
8 ~~ability to operate, the applicant may submit which may be~~
9 ~~accomplished by the submission of a \$50,000 surety bond to the~~
10 ~~agency.~~

11 ~~(4)~~ ~~An applicant for renewal who has demonstrated~~
12 ~~financial inability to operate must demonstrate financial~~
13 ~~ability to operate.~~

14 ~~(5)~~ ~~Each applicant for licensure must comply with the~~
15 ~~following requirements:~~

16 ~~(a)~~ ~~Upon receipt of a completed, signed, and dated~~
17 ~~application, the agency shall require background screening of~~
18 ~~the applicant, in accordance with the level 2 standards for~~
19 ~~screening set forth in chapter 435. As used in this~~
20 ~~subsection, the term "applicant" means the general manager and~~
21 ~~the financial officer or similarly titled individual who is~~
22 ~~responsible for the financial operation of the licensed~~
23 ~~facility.~~

24 ~~(b)~~ ~~The agency may require background screening for a~~
25 ~~member of the board of directors of the licensee or an officer~~
26 ~~or an individual owning 5 percent or more of the licensee if~~
27 ~~the agency has probable cause to believe that such individual~~
28 ~~has been convicted of an offense prohibited under the level 2~~
29 ~~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 paragraph (a).~~

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

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

29 ~~(f) A license may not be granted to any potential~~
30 ~~licensee if any applicant, administrator, or financial officer~~
31 ~~has been found guilty of, regardless of adjudication, or has~~

1 ~~entered a plea of nolo contendere or guilty to, any offense~~
2 ~~prohibited under the level 2 standards for screening set forth~~
3 ~~in chapter 435, unless an exemption from disqualification has~~
4 ~~been granted by the agency as set forth in chapter 435.~~

5 ~~(g) The agency may deny or revoke licensure to any~~
6 ~~potential licensee if any applicant:~~

7 ~~1. Has falsely represented a material fact in the~~
8 ~~application required by paragraphs (d) and (e), or has omitted~~
9 ~~any material fact from the application required by paragraphs~~
10 ~~(d) and (e); or~~

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

13 ~~(h) Upon licensure renewal, each applicant must submit~~
14 ~~to the agency, under penalty of perjury, an affidavit of~~
15 ~~compliance with the background screening provisions of this~~
16 ~~section.~~

17 ~~(3)(6)~~ As specified in part II of chapter 408, the
18 home medical equipment provider must also obtain and maintain
19 professional and commercial liability insurance. Proof of
20 liability insurance, as defined in s. 624.605, must be
21 submitted with the application. The agency shall set the
22 required amounts of liability insurance by rule, but the
23 required amount must not be less than \$250,000 per claim. In
24 the case of contracted services, it is required that the
25 contractor have liability insurance not less than \$250,000 per
26 claim.

27 ~~(7) A provisional license shall be issued to an~~
28 ~~approved applicant for initial licensure for a period of 90~~
29 ~~days, during which time a survey must be conducted~~
30 ~~demonstrating substantial compliance with this section. A~~
31 ~~provisional license shall also be issued pending the results~~

1 ~~of an applicant's Federal Bureau of Investigation report of~~
2 ~~background screening confirming that all standards have been~~
3 ~~met. If substantial compliance is demonstrated, a standard~~
4 ~~license shall be issued to expire 2 years after the effective~~
5 ~~date of the provisional license.~~

6 ~~(8) Ninety days before the expiration date, an~~
7 ~~application for license renewal must be submitted to the~~
8 ~~agency under oath on forms furnished by the agency, and a~~
9 ~~license shall be renewed if the applicant has met the~~
10 ~~requirements established under this part and applicable rules.~~
11 ~~The home medical equipment provider must file with the~~
12 ~~application satisfactory proof that it is in compliance with~~
13 ~~this part and applicable rules. The home medical equipment~~
14 ~~provider must submit satisfactory proof of its financial~~
15 ~~ability to comply with the requirements of this part.~~

16 ~~(9) When a change of ownership of a home medical~~
17 ~~equipment provider occurs, the prospective owner must submit~~
18 ~~an initial application for a license at least 15 days before~~
19 ~~the effective date of the change of ownership. An application~~
20 ~~for change of ownership of a license is required when~~
21 ~~ownership, a majority of the ownership, or controlling~~
22 ~~interest of a licensed home medical equipment provider is~~
23 ~~transferred or assigned and when a licensee agrees to~~
24 ~~undertake or provide services to the extent that legal~~
25 ~~liability for operation of the home medical equipment provider~~
26 ~~rests with the licensee. A provisional license shall be issued~~
27 ~~to the new owner for a period of 90 days, during which time~~
28 ~~all required documentation must be submitted and a survey must~~
29 ~~be conducted demonstrating substantial compliance with this~~
30 ~~section. If substantial compliance is demonstrated, a standard~~
31

1 ~~license shall be issued to expire 2 years after the issuance~~
2 ~~of the provisional license.~~

3 ~~(4)(10)~~ When a change of the general manager of a home
4 medical equipment provider occurs, the licensee must notify
5 the agency of the change within 45 days. ~~thereof and must~~
6 ~~provide evidence of compliance with the background screening~~
7 ~~requirements in subsection (5); except that a general manager~~
8 ~~who has met the standards for the Department of Law~~
9 ~~Enforcement background check, but for whom background~~
10 ~~screening results from the Federal Bureau of Investigation~~
11 ~~have not yet been received, may be employed pending receipt of~~
12 ~~the Federal Bureau of Investigation background screening~~
13 ~~report. An individual may not continue to serve as general~~
14 ~~manager if the Federal Bureau of Investigation background~~
15 ~~screening report indicates any violation of background~~
16 ~~screening standards.~~

17 ~~(5)(11)~~ In accordance with s. 408.805, an applicant or
18 a licensee shall pay a fee for each license application
19 submitted under this part, part II of chapter 408, and
20 applicable rules. The amount of the fee shall be established
21 by rule and may not exceed \$300 per biennium. All licensure
22 ~~fees required of a home medical equipment provider are~~
23 ~~nonrefundable.~~ The agency shall set the fees in an amount that
24 is sufficient to cover its costs in carrying out its
25 responsibilities under this part. However, state, county, or
26 municipal governments applying for licenses under this part
27 are exempt from the payment of license fees. ~~All fees~~
28 ~~collected under this part must be deposited in the Health Care~~
29 ~~Trust Fund for the administration of this part.~~

30 ~~(6)(12)~~ An applicant for initial licensure, renewal,
31 or change of ownership shall also ~~pay a license processing fee~~

1 ~~not to exceed \$300, to be paid by all applicants, and an~~
2 inspection fee not to exceed \$400, which shall ~~to~~ be paid by
3 all applicants except those not subject to licensure
4 inspection by the agency as described in s. 400.933(2).

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

8 ~~(14) When a duplicate license is issued, a fee must be~~
9 ~~assessed, not to exceed the actual cost of duplicating and~~
10 ~~mailing.~~

11 ~~(15) When applications are mailed out upon request, a~~
12 ~~fee must be assessed, not to exceed the cost of the printing,~~
13 ~~preparation, and mailing.~~

14 ~~(16) The license must be displayed in a conspicuous~~
15 ~~place in the administrative office of the home medical~~
16 ~~equipment provider and is valid only while in the possession~~
17 ~~of the person or entity to which it is issued. The license may~~
18 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
19 ~~or involuntarily, and is valid only for the home medical~~
20 ~~equipment provider and location for which originally issued.~~

21 ~~(17) A home medical equipment provider against whom a~~
22 ~~proceeding for revocation or suspension, or for denial of a~~
23 ~~renewal application, is pending at the time of license renewal~~
24 ~~may be issued a provisional license effective until final~~
25 ~~disposition by the agency of such proceedings. If judicial~~
26 ~~relief is sought from the final disposition, the court that~~
27 ~~has jurisdiction may issue a temporary permit for the duration~~
28 ~~of the judicial proceeding.~~

29 Section 109. Section 400.932, Florida Statutes, is
30 amended to read:

31

1 400.932 Administrative penalties; ~~injunctions;~~
2 ~~emergency orders; moratoriums.~~--

3 (1) The agency may deny, revoke, and ~~or~~ suspend a
4 license and, ~~or~~ impose an administrative fine not to exceed
5 \$5,000 per violation, ~~per day, or initiate injunctive~~
6 ~~proceedings under s. 400.956.~~

7 (2) Any of the following actions by an employee of a
8 home medical equipment provider are ~~or any of its employees is~~
9 grounds for administrative action or penalties by the agency:

10 (a) Violation of this part, part II of chapter 408, or
11 ~~of~~ applicable rules.

12 (b) An intentional, reckless, or negligent act that
13 materially affects the health or safety of a patient.

14 (3) The agency may deny or revoke the license of any
15 applicant that:

16 ~~(a) Made a false representation or omission of any~~
17 ~~material fact in making the application, including the~~
18 ~~submission of an application that conceals the controlling or~~
19 ~~ownership interest or any officer, director, agent, managing~~
20 ~~employee, affiliated person, partner, or shareholder who may~~
21 ~~not be eligible to participate;~~

22 (a)(b) Has been previously found by any professional
23 licensing, certifying, or standards board or agency to have
24 violated the standards or conditions relating to licensure or
25 certification or the quality of services provided.

26 "Professional licensing, certifying, or standards board or
27 agency" shall include, but is not limited to, practitioners,
28 health care facilities, programs, or services, or residential
29 care, treatment programs, or other human services; or

30 (b)(c) Has been or is currently excluded, suspended,
31 or terminated from, or has involuntarily withdrawn from,

1 ~~participation in Florida's Medicaid program or any other~~
2 ~~state's Medicaid program, or participation in the Medicare~~
3 ~~program or any other governmental or private health care or~~
4 health insurance program.

5 ~~(4) The agency may issue an emergency order~~
6 ~~immediately suspending or revoking a license when it~~
7 ~~determines that any condition within the responsibility of the~~
8 ~~home medical equipment provider presents a clear and present~~
9 ~~danger to public health and safety.~~

10 ~~(5) The agency may impose an immediate moratorium on~~
11 ~~any licensed home medical equipment provider when the agency~~
12 ~~determines that any condition within the responsibility of the~~
13 ~~home medical equipment provider presents a threat to public~~
14 ~~health or safety.~~

15 Section 110. Section 400.933, Florida Statutes, is
16 amended to read:

17 400.933 Licensure inspections and investigations.--

18 (1) In addition to the requirements of s. 408.811, the
19 agency shall make or cause to be made such inspections and
20 investigations as it considers necessary, including:

21 (a) Licensure inspections.

22 (b) Inspections directed by the federal Centers for
23 Medicare and Medicaid Services Health Care Financing
24 Administration.

25 (c) Licensure complaint investigations, including full
26 licensure investigations with a review of all licensure
27 standards as outlined in the administrative rules. Complaints
28 received by the agency from individuals, organizations, or
29 other sources are subject to review and investigation by the
30 agency.

31

1 (2) The agency shall accept, in lieu of its own
2 periodic inspections for licensure, submission of the
3 following:

4 (a) The survey or inspection of an accrediting
5 organization, provided the accreditation of the licensed home
6 medical equipment provider is not provisional and provided the
7 licensed home medical equipment provider authorizes release
8 of, and the agency receives the report of, the accrediting
9 organization; or

10 (b) A copy of a valid medical oxygen retail
11 establishment permit issued by the Department of Health,
12 pursuant to chapter 499.

13 Section 111. Section 400.935, Florida Statutes, is
14 amended to read:

15 400.935 Rules establishing minimum standards.--The
16 agency shall adopt, publish, and enforce rules to implement
17 this part and part II of chapter 408, which must provide
18 reasonable and fair minimum standards relating to:

19 (1) The qualifications and minimum training
20 requirements of all home medical equipment provider personnel.

21 ~~(2) License application and renewal.~~

22 ~~(3) License and inspection fees.~~

23 (2)(4) Financial ability to operate.

24 (3)(5) The administration of the home medical
25 equipment provider.

26 (4)(6) Procedures for maintaining patient records.

27 (5)(7) Ensuring that the home medical equipment and
28 services provided by a home medical equipment provider are in
29 accordance with the plan of treatment established for each
30 patient, when provided as a part of a plan of treatment.

31

1 ~~(6)(8)~~ Contractual arrangements for the provision of
2 home medical equipment and services by providers not employed
3 by the home medical equipment provider providing for the
4 consumer's needs.

5 ~~(7)(9)~~ Physical location and zoning requirements.

6 ~~(8)(10)~~ Home medical equipment requiring home medical
7 equipment services.

8 ~~(9)(11)~~ Preparation of the comprehensive emergency
9 management plan under s. 400.934 and the establishment of
10 minimum criteria for the plan, including the maintenance of
11 patient equipment and supply lists that can accompany patients
12 who are transported from their homes. Such rules shall be
13 formulated in consultation with the Department of Health and
14 the Department of Community Affairs.

15 Section 112. Section 400.95, Florida Statutes, is
16 repealed.

17 Section 113. Subsection (4) of section 400.955,
18 Florida Statutes, is amended to read:

19 400.955 Procedures for screening of home medical
20 equipment provider personnel.--

21 ~~(4) The general manager of each home medical equipment~~
22 ~~provider must sign an affidavit annually, under penalty of~~
23 ~~perjury, stating that all personnel hired on or after July 1,~~
24 ~~1999, have been screened and that its remaining personnel have~~
25 ~~worked for the home medical equipment provider continuously~~
26 ~~since before July 1, 1999.~~

27 Section 114. Section 400.956, Florida Statutes, is
28 repealed.

29 Section 115. Section 400.962, Florida Statutes, is
30 amended to read:

31 400.962 License required; license application.--

1 (1) The requirements of part II of chapter 408 apply
2 to the provision of services that require licensure pursuant
3 to this part and part II of chapter 408 and to entities
4 licensed by or applying for such licensure from the Agency for
5 Health Care Administration pursuant to this part. A license
6 issued by the agency is required in order to operate ~~It is~~
7 ~~unlawful to operate~~ an intermediate care facility for the
8 developmentally disabled in this state ~~without a license.~~

9 (2) Separate licenses are required for facilities
10 maintained on separate premises even if operated under the
11 same management. However, a separate license is not required
12 for separate buildings on the same grounds.

13 (3) In accordance with s. 408.805, an applicant or
14 licensee shall pay a fee for each license application
15 submitted under this part, part II of chapter 408, and
16 applicable rules. The amount of the fee shall be \$234 per bed
17 unless modified by rule. The basic license fee collected shall
18 ~~be deposited in the Health Care Trust Fund, established for~~
19 ~~carrying out the purposes of this chapter.~~

20 ~~(4) The license must be conspicuously displayed inside~~
21 ~~the facility.~~

22 ~~(5) A license is valid only in the hands of the~~
23 ~~individual, firm, partnership, association, or corporation to~~
24 ~~whom it is issued. A license is not valid for any premises~~
25 ~~other than those for which it was originally issued and may~~
26 ~~not be sold, assigned, or otherwise transferred, voluntarily~~
27 ~~or involuntarily.~~

28 ~~(6) An application for a license shall be made to the~~
29 ~~agency on forms furnished by it and must be accompanied by the~~
30 ~~appropriate license fee.~~

31

1 ~~(7) The application must be under oath and must~~
2 ~~contain the following:~~

3 ~~(a) The name, address, and social security number of~~
4 ~~the applicant if an individual; if the applicant is a firm,~~
5 ~~partnership, or association, its name, address, and employer~~
6 ~~identification number (EIN), and the name and address of every~~
7 ~~member; if the applicant is a corporation, its name, address,~~
8 ~~and employer identification number (EIN), and the name and~~
9 ~~address of its director and officers and of each person having~~
10 ~~at least a 5 percent interest in the corporation; and the name~~
11 ~~by which the facility is to be known.~~

12 ~~(b) The name of any person whose name is required on~~
13 ~~the application under paragraph (a) and who owns at least a 10~~
14 ~~percent interest in any professional service, firm,~~
15 ~~association, partnership, or corporation providing goods,~~
16 ~~leases, or services to the facility for which the application~~
17 ~~is made, and the name and address of the professional service,~~
18 ~~firm, association, partnership, or corporation in which such~~
19 ~~interest is held.~~

20 ~~(c) The application must indicate the location of the~~
21 ~~facility for which a license is sought and an indication that~~
22 ~~such location conforms to the local zoning ordinances.~~

23 ~~(d) The name of the persons under whose management or~~
24 ~~supervision the facility will be operated.~~

25 ~~(e) The total number of beds.~~

26 ~~(4)(8)~~ The applicant must demonstrate that sufficient
27 numbers of staff, qualified by training or experience, will be
28 employed to properly care for the type and number of residents
29 who will reside in the facility.

30 ~~(9) The applicant must submit evidence that~~
31 ~~establishes the good moral character of the applicant,~~

1 ~~manager, supervisor, and administrator. An applicant who is an~~
2 ~~individual or a member of a board of directors or officer of~~
3 ~~an applicant that is a firm, partnership, association, or~~
4 ~~corporation must not have been convicted, or found guilty,~~
5 ~~regardless of adjudication, of a crime in any jurisdiction~~
6 ~~which affects or may potentially affect residents in the~~
7 ~~facility.~~

8 ~~(10)(a) Upon receipt of a completed, signed, and dated~~
9 ~~application, the agency shall require background screening of~~
10 ~~the applicant, in accordance with the level 2 standards for~~
11 ~~screening set forth in chapter 435. As used in this~~
12 ~~subsection, the term "applicant" means the facility~~
13 ~~administrator, or similarly titled individual who is~~
14 ~~responsible for the day to day operation of the licensed~~
15 ~~facility, and the facility financial officer, or similarly~~
16 ~~titled individual who is responsible for the financial~~
17 ~~operation of the licensed facility.~~

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

24 ~~(c) Proof of compliance with the level 2 background~~
25 ~~screening requirements of chapter 435 which has been submitted~~
26 ~~within the previous 5 years in compliance with any other~~
27 ~~licensure requirements under this chapter or chapter 429~~
28 ~~satisfies the requirements of paragraph (a). Proof of~~
29 ~~compliance with background screening which has been submitted~~
30 ~~within the previous 5 years to fulfill the requirements of the~~
31 ~~Financial Services Commission and the Office of Insurance~~

1 ~~Regulation under chapter 651 as part of an application for a~~
2 ~~certificate of authority to operate a continuing care~~
3 ~~retirement community satisfies the requirements for the~~
4 ~~Department of Law Enforcement and Federal Bureau of~~
5 ~~Investigation background checks.~~

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

28 ~~(e) Each applicant must submit to the agency, with its~~
29 ~~application, a description and explanation of any exclusions,~~
30 ~~permanent suspensions, or terminations of the applicant from~~
31 ~~the Medicare or Medicaid programs. Proof of compliance with~~

1 ~~disclosure of ownership and control interest requirements of~~
2 ~~the Medicaid or Medicare programs shall be accepted in lieu of~~
3 ~~this submission.~~

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

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

24 ~~(11) The applicant must furnish satisfactory proof of~~
25 ~~financial ability to operate and conduct the facility in~~
26 ~~accordance with the requirements of this part and all rules~~
27 ~~adopted under this part, and the agency shall establish~~
28 ~~standards for this purpose.~~

29 ~~(5)(12)~~ The applicant must agree to provide or arrange
30 for active treatment services by an interdisciplinary team to
31 maximize individual independence or prevent regression or loss

1 of functional status. Standards for active treatment shall be
2 adopted by the Agency for Health Care Administration by rule
3 pursuant to ss. 120.536(1) and 120.54. Active treatment
4 services shall be provided in accordance with the individual
5 support plan and shall be reimbursed as part of the per diem
6 rate as paid under the Medicaid program.

7 Section 116. Section 400.963, Florida Statutes, is
8 repealed.

9 Section 117. Section 400.965, Florida Statutes, is
10 repealed.

11 Section 118. Section 400.967, Florida Statutes, is
12 amended to read:

13 400.967 Rules and classification of deficiencies.--

14 (1) It is the intent of the Legislature that rules
15 adopted and enforced under this part and part II of chapter
16 408 include criteria by which a reasonable and consistent
17 quality of resident care may be ensured, the results of such
18 resident care can be demonstrated, and safe and sanitary
19 facilities can be provided.

20 (2) Pursuant to the intention of the Legislature, the
21 agency, in consultation with the Agency for Persons with
22 Disabilities and the Department of Elderly Affairs, shall
23 adopt and enforce rules to administer this part and part II of
24 chapter 408, which shall include reasonable and fair criteria
25 governing:

26 (a) The location and construction of the facility;
27 including fire and life safety, plumbing, heating, cooling,
28 lighting, ventilation, and other housing conditions that will
29 ensure the health, safety, and comfort of residents. The
30 agency shall establish standards for facilities and equipment
31 to increase the extent to which new facilities and a new wing

1 or floor added to an existing facility after July 1, 2000, are
2 structurally capable of serving as shelters only for
3 residents, staff, and families of residents and staff, and
4 equipped to be self-supporting during and immediately
5 following disasters. The Agency for Health Care Administration
6 shall work with facilities licensed under this part and report
7 to the Governor and the Legislature by April 1, 2000, its
8 recommendations for cost-effective renovation standards to be
9 applied to existing facilities. In making such rules, the
10 agency shall be guided by criteria recommended by nationally
11 recognized, reputable professional groups and associations
12 having knowledge concerning such subject matters. The agency
13 shall update or revise such criteria as the need arises. All
14 facilities must comply with those lifesafety code requirements
15 and building code standards applicable at the time of approval
16 of their construction plans. The agency may require
17 alterations to a building if it determines that an existing
18 condition constitutes a distinct hazard to life, health, or
19 safety. The agency shall adopt fair and reasonable rules
20 setting forth conditions under which existing facilities
21 undergoing additions, alterations, conversions, renovations,
22 or repairs are required to comply with the most recent updated
23 or revised standards.

24 (b) The number and qualifications of all personnel,
25 including management, medical nursing, and other personnel,
26 having responsibility for any part of the care given to
27 residents.

28 (c) All sanitary conditions within the facility and
29 its surroundings, including water supply, sewage disposal,
30 food handling, and general hygiene, which will ensure the
31 health and comfort of residents.

1 (d) The equipment essential to the health and welfare
2 of the residents.

3 (e) A uniform accounting system.

4 (f) The care, treatment, and maintenance of residents
5 and measurement of the quality and adequacy thereof.

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

29 ~~(h) The posting of licenses. Each licensee shall post~~
30 ~~its license in a prominent place that is in clear and~~

31

1 ~~unobstructed public view at or near the place where residents~~
2 ~~are being admitted to the facility.~~

3 (h)(i) The use of restraint and seclusion. Such rules
4 must be consistent with recognized best practices; prohibit
5 inherently dangerous restraint or seclusion procedures;
6 establish limitations on the use and duration of restraint and
7 seclusion; establish measures to ensure the safety of clients
8 and staff during an incident of restraint or seclusion;
9 establish procedures for staff to follow before, during, and
10 after incidents of restraint or seclusion, including
11 individualized plans for the use of restraints or seclusion in
12 emergency situations; establish professional qualifications of
13 and training for staff who may order or be engaged in the use
14 of restraint or seclusion; establish requirements for facility
15 data collection and reporting relating to the use of restraint
16 and seclusion; and establish procedures relating to the
17 documentation of the use of restraint or seclusion in the
18 client's facility or program record.

19 (3) The agency shall adopt rules to provide that, when
20 the criteria established under this part and part II of
21 chapter 408 ~~subsection (2)~~ are not met, such deficiencies
22 shall be classified according to the nature of the deficiency.
23 The agency shall indicate the classification on the face of
24 the notice of deficiencies as follows:

25 (a) Class I deficiencies are those which the agency
26 determines present an ~~and~~ imminent danger to the residents or
27 guests of the facility or a substantial probability that death
28 or serious physical harm would result therefrom. The condition
29 or practice constituting a class I violation must be abated or
30 eliminated immediately, unless a fixed period of time, as
31 determined by the agency, is required for correction.

1 ~~Notwithstanding s. 400.121(2),~~ A class I deficiency is subject
2 to a civil penalty in an amount not less than \$5,000 and not
3 exceeding \$10,000 for each deficiency. A fine may be levied
4 notwithstanding the correction of the deficiency.

5 (b) Class II deficiencies are those which the agency
6 determines have a direct or immediate relationship to the
7 health, safety, or security of the facility residents, other
8 than class I deficiencies. A class II deficiency is subject to
9 a civil penalty in an amount not less than \$1,000 and not
10 exceeding \$5,000 for each deficiency. A citation for a class
11 II deficiency shall specify the time within which the
12 deficiency must be corrected. If a class II deficiency is
13 corrected within the time specified, no civil penalty shall be
14 imposed, unless it is a repeated offense.

15 (c) Class III deficiencies are those which the agency
16 determines to have an indirect or potential relationship to
17 the health, safety, or security of the facility residents,
18 other than class I or class II deficiencies. A class III
19 deficiency is subject to a civil penalty of not less than \$500
20 and not exceeding \$1,000 for each deficiency. A citation for a
21 class III deficiency shall specify the time within which the
22 deficiency must be corrected. If a class III deficiency is
23 corrected within the time specified, no civil penalty shall be
24 imposed, unless it is a repeated offense.

25 ~~(4) Civil penalties paid by any licensee under~~
26 ~~subsection (3) shall be deposited in the Health Care Trust~~
27 ~~Fund and expended as provided in s. 400.063.~~

28 (4)(5) The agency shall approve or disapprove the
29 plans and specifications within 60 days after receipt of the
30 final plans and specifications. The agency may be granted one
31 15-day extension for the review period, if the secretary of

1 the agency so approves. If the agency fails to act within the
2 specified time, it is deemed to have approved the plans and
3 specifications. When the agency disapproves plans and
4 specifications, it must set forth in writing the reasons for
5 disapproval. Conferences and consultations may be provided as
6 necessary.

7 ~~(5)(6)~~ The agency may charge an initial fee of \$2,000
8 for review of plans and construction on all projects, no part
9 of which is refundable. The agency may also collect a fee, not
10 to exceed 1 percent of the estimated construction cost or the
11 actual cost of review, whichever is less, for the portion of
12 the review which encompasses initial review through the
13 initial revised construction document review. The agency may
14 collect its actual costs on all subsequent portions of the
15 review and construction inspections. Initial fee payment must
16 accompany the initial submission of plans and specifications.
17 Any subsequent payment that is due is payable upon receipt of
18 the invoice from the agency. Notwithstanding any other
19 provision of law, all money received by the agency under this
20 section shall be deemed to be trust funds, to be held and
21 applied solely for the operations required under this section.

22 Section 119. Section 400.968, Florida Statutes, is
23 amended to read:

24 400.968 Right of entry; ~~protection of health, safety,~~
25 ~~and welfare.--~~

26 ~~(1)~~ In addition to the requirements of s. 408.811, any
27 designated officer or employee of the agency, or any officer
28 or employee of the state, or of the local fire marshal, may
29 enter unannounced the premises of any facility licensed under
30 this part in order to determine the state of compliance with
31 this part, part II of chapter 408, and applicable rules and

1 ~~the rules or standards in force under this part. The right of~~
2 ~~entry and inspection also extends to any premises that the~~
3 ~~agency has reason to believe are being operated or maintained~~
4 ~~as a facility without a license; but such an entry or~~
5 ~~inspection may not be made without the permission of the owner~~
6 ~~or person in charge of the facility unless a warrant that~~
7 ~~authorizes the entry is first obtained from the circuit court.~~
8 ~~The warrant requirement extends only to a facility that the~~
9 ~~agency has reason to believe is being operated or maintained~~
10 ~~as a facility without a license. An application for a license~~
11 ~~or renewal thereof which is made under this section~~
12 ~~constitutes permission for, and acquiescence in, any entry or~~
13 ~~inspection of the premises for which the license is sought, in~~
14 ~~order to facilitate verification of the information submitted~~
15 ~~in connection with the application; to discover, investigate,~~
16 ~~and determine the existence of abuse or neglect; or to elicit,~~
17 ~~receive, respond to, and resolve complaints. A current valid~~
18 ~~license constitutes unconditional permission for, and~~
19 ~~acquiescence in, any entry or inspection of the premises by~~
20 ~~authorized personnel. The agency retains the right of entry~~
21 ~~and inspection of facilities that have had a license revoked~~
22 ~~or suspended within the previous 24 months, to ensure that the~~
23 ~~facility is not operating unlawfully. However, before the~~
24 ~~facility is entered, a statement of probable cause must be~~
25 ~~filed with the director of the agency, who must approve or~~
26 ~~disapprove the action within 48 hours.~~

27 ~~(2) The agency may institute injunctive proceedings in~~
28 ~~a court of competent jurisdiction for temporary or permanent~~
29 ~~relief to:~~

30 ~~(a) Enforce this section or any minimum standard,~~
31 ~~rule, or order issued pursuant thereto if the agency's effort~~

1 ~~to correct a violation through administrative fines has failed~~
2 ~~or when the violation materially affects the health, safety,~~
3 ~~or welfare of residents; or~~

4 ~~(b) Terminate the operation of a facility if a~~
5 ~~violation of this section or of any standard or rule adopted~~
6 ~~pursuant thereto exists which materially affects the health,~~
7 ~~safety, or welfare of residents.~~

8
9 ~~The Legislature recognizes that, in some instances, action is~~
10 ~~necessary to protect residents of facilities from immediately~~
11 ~~life threatening situations. If it appears by competent~~
12 ~~evidence or a sworn, substantiated affidavit that a temporary~~
13 ~~injunction should issue, the court, pending the determination~~
14 ~~on final hearing, shall enjoin operation of the facility.~~

15 ~~(3) The agency may impose an immediate moratorium on~~
16 ~~admissions to a facility when the agency determines that any~~
17 ~~condition in the facility presents a threat to the health,~~
18 ~~safety, or welfare of the residents in the facility. If a~~
19 ~~facility's license is denied, revoked, or suspended, the~~
20 ~~facility may be subject to the immediate imposition of a~~
21 ~~moratorium on admissions to run concurrently with licensure~~
22 ~~denial, revocation, or suspension.~~

23 Section 120. Subsection (1) of section 400.969,
24 Florida Statutes, is amended to read:

25 400.969 Violation of part; penalties.--

26 (1) In addition to the requirements of part II of
27 chapter 408, and except as provided in s. 400.967(3), a
28 violation of any provision of this part, part II of chapter
29 408, or applicable rules ~~adopted by the agency under this part~~
30 is punishable by payment of an administrative or civil penalty
31 not to exceed \$5,000.

1 Section 121. Section 400.980, Florida Statutes, is
2 amended to read:

3 400.980 Health care services pools.--

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

5 (a) "Agency" means the Agency for Health Care
6 Administration.

7 (b) "Health care services pool" means any person,
8 firm, corporation, partnership, or association engaged for
9 hire in the business of providing temporary employment in
10 health care facilities, residential facilities, and agencies
11 for licensed, certified, or trained health care personnel
12 including, without limitation, nursing assistants, nurses'
13 aides, and orderlies. However, the term does not include
14 nursing registries, a facility licensed under this chapter or
15 chapter 429, a health care services pool established within a
16 health care facility to provide services only within the
17 confines of such facility, or any individual contractor
18 directly providing temporary services to a health care
19 facility without use or benefit of a contracting agent.

20 (2) The requirements of part II of chapter 408 apply
21 to the provision of services that require licensure or
22 registration pursuant to this part and part II of chapter 408
23 and to entities registered by or applying for such
24 registration from the agency pursuant to this part.
25 Registration or a license issued by the agency is required for
26 the operation of ~~Each person who operates~~ a health care
27 services pool in this state. In accordance with s. 408.805, an
28 applicant or licensee shall pay a fee for each license
29 application submitted using this part, part II of chapter 408,
30 and applicable rules. ~~must register each separate business~~
31 ~~location with the agency.~~ The agency shall adopt rules and

1 provide forms required for such registration and shall impose
2 a registration fee in an amount sufficient to cover the cost
3 of administering this part and part II of chapter 408 ~~section~~.
4 In addition to the requirements in part II of chapter 408, the
5 registrant must provide the agency with any change of
6 information contained on the original registration application
7 within 14 days prior to the change. ~~The agency may inspect the~~
8 ~~offices of any health care services pool at any reasonable~~
9 ~~time for the purpose of determining compliance with this~~
10 ~~section or the rules adopted under this section.~~

11 ~~(3) Each application for registration must include:~~

12 ~~(a) The name and address of any person who has an~~
13 ~~ownership interest in the business, and, in the case of a~~
14 ~~corporate owner, copies of the articles of incorporation,~~
15 ~~bylaws, and names and addresses of all officers and directors~~
16 ~~of the corporation.~~

17 ~~(b) Any other information required by the agency.~~

18 ~~(3)(4) Each applicant for registration must comply~~
19 ~~with the following requirements:~~

20 ~~(a) Upon receipt of a completed, signed, and dated~~
21 ~~application, the agency shall require background screening, in~~
22 ~~accordance with the level 1 standards for screening set forth~~
23 ~~in chapter 435, of every individual who will have contact with~~
24 ~~patients. The agency shall require background screening of the~~
25 ~~managing employee or other similarly titled individual who is~~
26 ~~responsible for the operation of the entity, and of the~~
27 ~~financial officer or other similarly titled individual who is~~
28 ~~responsible for the financial operation of the entity,~~
29 ~~including billings for services in accordance with the level 2~~
30 ~~standards for background screening as set forth in chapter~~
31 ~~435.~~

1 ~~(b) The agency may require background screening of any~~
2 ~~other individual who is affiliated with the applicant if the~~
3 ~~agency has a reasonable basis for believing that he or she has~~
4 ~~been convicted of a crime or has committed any other offense~~
5 ~~prohibited under the level 2 standards for screening set forth~~
6 ~~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).~~

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

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

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

26 ~~(g) A registration may not be granted to an applicant~~
27 ~~if the applicant or managing employee has been found guilty~~
28 ~~of, regardless of adjudication, or has entered a plea of nolo~~
29 ~~contendere or guilty to, any offense prohibited under the~~
30 ~~level 2 standards for screening set forth in chapter 435,~~
31

1 ~~unless an exemption from disqualification has been granted by~~
2 ~~the agency as set forth in chapter 435.~~

3 ~~(h) Failure to provide all required documentation~~
4 ~~within 30 days after a written request from the agency will~~
5 ~~result in denial of the application for registration.~~

6 ~~(i) The agency must take final action on an~~
7 ~~application for registration within 60 days after receipt of~~
8 ~~all required documentation.~~

9 ~~(j) The agency may deny, revoke, or suspend the~~
10 ~~registration of any applicant or registrant who:~~

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

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

18 ~~3. Fails to comply with this section or applicable~~
19 ~~rules.~~

20 ~~4. Commits an intentional, reckless, or negligent act~~
21 ~~that materially affects the health or safety of a person~~
22 ~~receiving services.~~

23 ~~(5) It is a misdemeanor of the first degree,~~
24 ~~punishable under s. 775.082 or s. 775.083, for any person~~
25 ~~willfully, knowingly, or intentionally to:~~

26 ~~(a) Fail, by false statement, misrepresentation,~~
27 ~~impersonation, or other fraudulent means, to disclose in any~~
28 ~~application for voluntary or paid employment a material fact~~
29 ~~used in making a determination as to an applicant's~~
30 ~~qualifications to be a contractor under this section;~~

31

1 ~~(b) Operate or attempt to operate an entity registered~~
2 ~~under this part with persons who do not meet the minimum~~
3 ~~standards of chapter 435 as contained in this section; or~~

4 ~~(c) Use information from the criminal records obtained~~
5 ~~under this section for any purpose other than screening an~~
6 ~~applicant for temporary employment as specified in this~~
7 ~~section, or release such information to any other person for~~
8 ~~any purpose other than screening for employment under this~~
9 ~~section.~~

10 ~~(6) It is a felony of the third degree, punishable~~
11 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
12 ~~willfully, knowingly, or intentionally to use information from~~
13 ~~the juvenile records of a person obtained under this section~~
14 ~~for any purpose other than screening for employment under this~~
15 ~~section.~~

16 ~~(7) It is unlawful for a person to offer or advertise~~
17 ~~services, as defined by rule, to the public without obtaining~~
18 ~~a certificate of registration from the Agency for Health Care~~
19 ~~Administration. It is unlawful for any holder of a certificate~~
20 ~~of registration to advertise or hold out to the public that he~~
21 ~~or she holds a certificate of registration for other than that~~
22 ~~for which he or she actually holds a certificate of~~
23 ~~registration. Any person who violates this subsection is~~
24 ~~subject to injunctive proceedings under s. 400.515.~~

25 ~~(8) Each registration shall be for a period of 2~~
26 ~~years. The application for renewal must be received by the~~
27 ~~agency at least 30 days before the expiration date of the~~
28 ~~registration. An application for a new registration is~~
29 ~~required within 30 days prior to the sale of a controlling~~
30 ~~interest in a health care services pool.~~

31

1 ~~(4)(9)~~ A health care services pool may not require an
2 employee to recruit new employees from persons employed at a
3 health care facility to which the health care services pool
4 employee is assigned. Nor shall a health care facility to
5 which employees of a health care services pool are assigned
6 recruit new employees from the health care services pool.

7 ~~(5)(10)~~ A health care services pool shall document
8 that each temporary employee provided to a health care
9 facility has met the licensing, certification, training, or
10 continuing education requirements, as established by the
11 appropriate regulatory agency, for the position in which he or
12 she will be working.

13 ~~(6)(11)~~ When referring persons for temporary
14 employment in health care facilities, a health care services
15 pool shall comply with all pertinent state and federal laws,
16 rules, and regulations relating to health, background
17 screening, and other qualifications required of persons
18 working in a facility of that type.

19 ~~(7)(12)~~(a) As a condition of registration and prior to
20 the issuance or renewal of a certificate of registration, a
21 health care services pool applicant must prove financial
22 responsibility to pay claims, and costs ancillary thereto,
23 arising out of the rendering of services or failure to render
24 services by the pool or by its employees in the course of
25 their employment with the pool. The agency shall promulgate
26 rules establishing minimum financial responsibility coverage
27 amounts which shall be adequate to pay potential claims and
28 costs ancillary thereto.

29 (b) Each health care services pool shall give written
30 notification to the agency within 20 days after any change in
31 the method of assuring financial responsibility or upon

1 cancellation or nonrenewal of professional liability
2 insurance. Unless the pool demonstrates that it is otherwise
3 in compliance with the requirements of this subsection
4 ~~section~~, the agency shall suspend the registration of the pool
5 pursuant to s. 408.814 ~~ss. 120.569 and 120.57~~. Any suspension
6 under this section shall remain in effect until the pool
7 demonstrates compliance with the requirements of this
8 subsection ~~section~~.

9 (c) Proof of financial responsibility must be
10 demonstrated to the satisfaction of the agency, through one of
11 the following methods:

12 1. Establishing and maintaining an escrow account
13 consisting of cash or assets eligible for deposit in
14 accordance with s. 625.52;

15 2. Obtaining and maintaining an unexpired irrevocable
16 letter of credit established pursuant to chapter 675. Such
17 letters of credit shall be nontransferable and nonassignable
18 and shall be issued by any bank or savings association
19 organized and existing under the laws of this state or any
20 bank or savings association organized under the laws of the
21 United States that has its principal place of business in this
22 state or has a branch office which is authorized under the
23 laws of this state or of the United States to receive deposits
24 in this state; or

25 3. Obtaining and maintaining professional liability
26 coverage from one of the following:

27 a. An authorized insurer as defined under s. 624.09;

28 b. An eligible surplus lines insurer as defined under
29 s. 626.918(2);

30 c. A risk retention group or purchasing group as
31 defined under s. 627.942; or

1 d. A plan of self-insurance as provided in s. 627.357.

2 (d) If financial responsibility requirements are met
3 by maintaining an escrow account or letter of credit, as
4 provided in this subsection ~~section~~, upon the entry of an
5 adverse final judgment arising from a medical malpractice
6 arbitration award from a claim of medical malpractice either
7 in contract or tort, or from noncompliance with the terms of a
8 settlement agreement arising from a claim of medical
9 malpractice either in contract or tort, the financial
10 institution holding the escrow account or the letter of credit
11 shall pay directly to the claimant the entire amount of the
12 judgment together with all accrued interest or the amount
13 maintained in the escrow account or letter of credit as
14 required by this subsection ~~section~~, whichever is less, within
15 60 days after the date such judgment became final and subject
16 to execution, unless otherwise mutually agreed to in writing
17 by the parties. If timely payment is not made, the agency
18 shall suspend the registration of the pool pursuant to
19 procedures set forth by the agency through rule. Nothing in
20 this paragraph shall abrogate a judgment debtor's obligation
21 to satisfy the entire amount of any judgment.

22 (e) Each health care services pool carrying
23 claims-made coverage must demonstrate proof of extended
24 reporting coverage through either tail or nose coverage, in
25 the event the policy is canceled, replaced, or not renewed.
26 Such extended coverage shall provide coverage for incidents
27 that occurred during the claims-made policy period but were
28 reported after the policy period.

29 (f) The financial responsibility requirements of this
30 subsection ~~section~~ shall apply to claims for incidents that
31

1 occur on or after January 1, 1991, or the initial date of
2 registration in this state, whichever is later.

3 (g) Meeting the financial responsibility requirements
4 of this subsection ~~section~~ must be established at the time of
5 issuance or renewal of a certificate of registration.

6 ~~(8)(13)~~ In addition to the requirements of part II of
7 chapter 408, the agency shall adopt rules to implement this
8 part ~~section~~, including rules providing for the establishment
9 of:

10 (a) Minimum standards for the operation and
11 administration of health care personnel pools, including
12 procedures for recordkeeping and personnel.

13 (b) Fines for the violation of this part, part II of
14 chapter 408, or applicable rules ~~section~~ in an amount not to
15 exceed \$2,500 ~~and suspension or revocation of registration.~~

16 ~~(c) Disciplinary sanctions for failure to comply with~~
17 ~~this section or the rules adopted under this section.~~

18 Section 122. Paragraph (a) of subsection (4) of
19 section 400.9905, Florida Statutes, is amended, and paragraph
20 (1) is added to that subsection, to read:

21 400.9905 Definitions.--

22 (4) "Clinic" means an entity at which health care
23 services are provided to individuals and which tenders charges
24 for reimbursement for such services, including a mobile clinic
25 and a portable equipment provider. For purposes of this part,
26 the term does not include and the licensure requirements of
27 this part do not apply to:

28 (a) Entities licensed or registered by the state under
29 chapter 395; or entities licensed or registered by the state
30 and providing only health care services within the scope of
31 services authorized under their respective licenses granted

1 under ss. 383.30-383.335, chapter 390, chapter 394, chapter
2 397, this chapter except part X, chapter 429, chapter 463,
3 chapter 465, chapter 466, chapter 478, part I of chapter 483,
4 chapter 484, or chapter 651; end-stage renal disease providers
5 authorized under 42 C.F.R. part 405, subpart U; or providers
6 certified under 42 C.F.R. part 485, subpart B or subpart H; or
7 any entity that provides neonatal or pediatric hospital-based
8 health care services or other health care services by licensed
9 practitioners solely within a hospital licensed under chapter
10 395.

11 (1) Orthotic or prosthetic clinical facilities that
12 are a publicly traded corporation or that are wholly owned,
13 directly or indirectly, by a publicly traded corporation. As
14 used in this paragraph, a publicly traded corporation is a
15 corporation that issues securities traded on an exchange
16 registered with the United States Securities and Exchange
17 Commission as a national securities exchange.

18 Section 123. Section 400.991, Florida Statutes, is
19 amended to read:

20 400.991 License requirements; background screenings;
21 prohibitions.--

22 (1)(a) The requirements of part II of chapter 408
23 apply to the provision of services that require 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 pursuant to this part. A license issued by the agency
27 is required in order to operate a clinic in this state. ~~Each~~
28 clinic, as defined in s. 400.9905, must be licensed and shall
29 at all times maintain a valid license with the agency. Each
30 clinic location shall be licensed separately regardless of
31

1 | whether the clinic is operated under the same business name or
2 | management as another clinic.

3 | (b) Each mobile clinic must obtain a separate health
4 | care clinic license and must provide to the agency, at least
5 | quarterly, its projected street location to enable the agency
6 | to locate and inspect such clinic. A portable equipment
7 | provider must obtain a health care clinic license for a single
8 | administrative office and is not required to submit quarterly
9 | projected street locations.

10 | (2) The initial clinic license application shall be
11 | filed with the agency by all clinics, as defined in s.
12 | 400.9905, on or before July 1, 2004. ~~A clinic license must be~~
13 | ~~renewed biennially.~~

14 | ~~(3) Applicants that submit an application on or before~~
15 | ~~July 1, 2004, which meets all requirements for initial~~
16 | ~~licensure as specified in this section shall receive a~~
17 | ~~temporary license until the completion of an initial~~
18 | ~~inspection verifying that the applicant meets all requirements~~
19 | ~~in rules authorized in s. 400.9925. However, a clinic engaged~~
20 | ~~in magnetic resonance imaging services may not receive a~~
21 | ~~temporary license unless it presents evidence satisfactory to~~
22 | ~~the agency that such clinic is making a good faith effort and~~
23 | ~~substantial progress in seeking accreditation required under~~
24 | ~~s. 400.9935.~~

25 | ~~(4) Application for an initial clinic license or for~~
26 | ~~renewal of an existing license shall be notarized on forms~~
27 | ~~furnished by the agency and must be accompanied by the~~
28 | ~~appropriate license fee as provided in s. 400.9925. The agency~~
29 | ~~shall take final action on an initial license application~~
30 | ~~within 60 days after receipt of all required documentation.~~

31 |

1 ~~(3)(5)~~ The application shall contain information that
2 includes, but need not be limited to, information pertaining
3 to the name, residence and business address, phone number,
4 social security number, and license number of the medical or
5 clinic director, of the licensed medical providers employed or
6 under contract with the clinic, ~~and of each person who,~~
7 ~~directly or indirectly, owns or controls 5 percent or more of~~
8 ~~an interest in the clinic, or general partners in limited~~
9 ~~liability partnerships.~~

10 ~~(4)(6)~~ In addition to the requirements of part II of
11 chapter 408, the applicant must file with the application
12 satisfactory proof that the clinic is in compliance with this
13 part and applicable rules, including:

14 (a) A listing of services to be provided either
15 directly by the applicant or through contractual arrangements
16 with existing providers;

17 (b) The number and discipline of each professional
18 staff member to be employed; and

19 (c) Proof of financial ability to operate as required
20 under s. 408.810(8). ~~An applicant must demonstrate financial~~
21 ~~ability to operate a clinic by submitting a balance sheet and~~
22 ~~an income and expense statement for the first year of~~
23 ~~operation which provide evidence of the applicant's having~~
24 ~~sufficient assets, credit, and projected revenues to cover~~
25 ~~liabilities and expenses. The applicant shall have~~
26 ~~demonstrated financial ability to operate if the applicant's~~
27 ~~assets, credit, and projected revenues meet or exceed~~
28 ~~projected liabilities and expenses. All documents required~~
29 ~~under this subsection must be prepared in accordance with~~
30 ~~generally accepted accounting principles, may be in a~~
31 ~~compilation form, and the financial statement must be signed~~

1 | ~~by a certified public accountant.~~ As an alternative to
2 | submitting proof of financial ability to operate as required
3 | under s. 408.810(8) a balance sheet and an income and expense
4 | ~~statement for the first year of operation,~~ the applicant may
5 | file a surety bond of at least \$500,000 which guarantees that
6 | the clinic will act in full conformity with all legal
7 | requirements for operating a clinic, payable to the agency.
8 | The agency may adopt rules to specify related requirements for
9 | such surety bond.

10 | ~~(5)(7)~~ Each applicant for licensure shall comply with
11 | the following requirements:

12 | (a) As used in this subsection, the term "applicant"
13 | means individuals owning or controlling, directly or
14 | indirectly, 5 percent or more of an interest in a clinic; the
15 | medical or clinic director, or a similarly titled person who
16 | is responsible for the day-to-day operation of the licensed
17 | clinic; the financial officer or similarly titled individual
18 | who is responsible for the financial operation of the clinic;
19 | and licensed health care practitioners at the clinic.

20 | (b) Upon receipt of a completed, signed, and dated
21 | application, the agency shall require background screening of
22 | the applicant, in accordance with the level 2 standards for
23 | screening set forth in chapter 435. Proof of compliance with
24 | the level 2 background screening requirements of chapter 435
25 | which has been submitted within the previous 5 years in
26 | compliance with any other health care licensure requirements
27 | of this state is acceptable in fulfillment of this paragraph.
28 | Applicants who own less than 10 percent of a health care
29 | clinic are not required to submit fingerprints under this
30 | section.

31 |

1 (c) Each applicant must submit to the agency, with the
2 application, a description and explanation of any exclusions,
3 permanent suspensions, or terminations of an applicant from
4 the Medicare or Medicaid programs. Proof of compliance with
5 the requirements for disclosure of ownership and control
6 interest under the Medicaid or Medicare programs may be
7 accepted in lieu of this submission. The description and
8 explanation may indicate whether such exclusions, suspensions,
9 or terminations were voluntary or not voluntary on the part of
10 the applicant.

11 (d) A license may not be granted to a clinic if the
12 applicant has been found guilty of, regardless of
13 adjudication, or has entered a plea of nolo contendere or
14 guilty to, any offense prohibited under the level 2 standards
15 for screening set forth in chapter 435, or a violation of
16 insurance fraud under s. 817.234, within the past 5 years. If
17 the applicant has been convicted of an offense prohibited
18 under the level 2 standards or insurance fraud in any
19 jurisdiction, the applicant must show that his or her civil
20 rights have been restored prior to submitting an application.

21 ~~(e) The agency may deny or revoke licensure if the~~
22 ~~applicant has falsely represented any material fact or omitted~~
23 ~~any material fact from the application required by this part.~~

24 ~~(8) Requested information omitted from an application~~
25 ~~for licensure, license renewal, or transfer of ownership must~~
26 ~~be filed with the agency within 21 days after receipt of the~~
27 ~~agency's request for omitted information, or the application~~
28 ~~shall be deemed incomplete and shall be withdrawn from further~~
29 ~~consideration.~~

30
31

1 ~~(9) The failure to file a timely renewal application~~
2 ~~shall result in a late fee charged to the facility in an~~
3 ~~amount equal to 50 percent of the current license fee.~~

4 Section 124. Section 400.9915, Florida Statutes, is
5 amended to read:

6 400.9915 ~~Clinic inspections;~~ Emergency suspension;
7 costs.--

8 ~~(1) Any authorized officer or employee of the agency~~
9 ~~shall make inspections of the clinic as part of the initial~~
10 ~~license application or renewal application. The application~~
11 ~~for a clinic license issued under this part or for a renewal~~
12 ~~license constitutes permission for an appropriate agency~~
13 ~~inspection to verify the information submitted on or in~~
14 ~~connection with the application or renewal.~~

15 ~~(2) An authorized officer or employee of the agency~~
16 ~~may make unannounced inspections of clinics licensed pursuant~~
17 ~~to this part as are necessary to determine that the clinic is~~
18 ~~in compliance with this part and with applicable rules. A~~
19 ~~licensed clinic shall allow full and complete access to the~~
20 ~~premises and to billing records or information to any~~
21 ~~representative of the agency who makes an inspection to~~
22 ~~determine compliance with this part and with applicable rules.~~

23 ~~(1)(3) Failure by a clinic licensed under this part to~~
24 ~~allow full and complete access to the premises and to billing~~
25 ~~records or information to any representative of the agency who~~
26 ~~makes a request to inspect the clinic to determine compliance~~
27 ~~with this part or failure by a clinic to employ a qualified~~
28 ~~medical director or clinic director constitutes a ground for~~
29 ~~emergency suspension of the license by the agency pursuant to~~
30 ~~s. 408.814 ~~s. 120.60(6).~~~~

31

1 ~~(2)(4)~~ In addition to any administrative fines imposed
2 pursuant to this part or part II of chapter 408, the agency
3 may assess a fee equal to the cost of conducting a complaint
4 investigation.

5 Section 125. Section 400.992, Florida Statutes, is
6 repealed.

7 Section 126. Section 400.9925, Florida Statutes, is
8 amended to read:

9 400.9925 Rulemaking authority; license fees.--

10 (1) The agency shall adopt rules necessary to
11 administer the clinic administration, regulation, and
12 licensure program, including rules pursuant to this part and
13 part II of chapter 408, establishing the specific licensure
14 requirements, procedures, forms, and fees. It shall adopt
15 rules establishing a procedure for the biennial renewal of
16 licenses. The agency may issue initial licenses for less than
17 the full 2-year period by charging a prorated licensure fee
18 and specifying a different renewal date than would otherwise
19 be required for biennial licensure. The rules shall specify
20 the expiration dates of licenses, the process of tracking
21 compliance with financial responsibility requirements, and any
22 other conditions of renewal required by law or rule.

23 (2) The agency shall adopt rules specifying
24 limitations on the number of licensed clinics and licensees
25 for which a medical director or a clinic director may assume
26 responsibility for purposes of this part. In determining the
27 quality of supervision a medical director or a clinic director
28 can provide, the agency shall consider the number of clinic
29 employees, the clinic location, and the health care services
30 provided by the clinic.

31

1 (3) In accordance with s. 408.805, an applicant or a
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. ~~License application and~~
6 ~~renewal fees must be reasonably calculated by the agency to~~
7 ~~cover its costs in carrying out its responsibilities under~~
8 ~~this part, including the cost of licensure, inspection, and~~
9 ~~regulation of clinics, and must be of such amount that the~~
10 ~~total fees collected do not exceed the cost of administering~~
11 ~~and enforcing compliance with this part. Clinic licensure fees~~
12 ~~are nonrefundable and may not exceed \$2,000. The agency shall~~
13 ~~adjust the license fee annually by not more than the change in~~
14 ~~the Consumer Price Index based on the 12 months immediately~~
15 ~~preceding the increase. All fees collected under this part~~
16 ~~must be deposited in the Health Care Trust Fund for the~~
17 ~~administration of this part.~~

18 Section 127. Section 400.993, Florida Statutes, is
19 amended to read:

20 400.993 Unlicensed clinics; reporting penalties;
21 finer; 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 (1)(2) Any person who violates s. 408.812 regarding
25 unlicensed activity owns, operates, or maintains an unlicensed
26 clinic commits a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
28 continued operation is a separate offense.

29 (2)(3) Any person found guilty of violating s. 408.812
30 subsection (2) a second or subsequent time commits a felony of
31 the second degree, punishable as provided under s. 775.082, s.

1 775.083, or s. 775.084. Each day of continued operation is a
2 separate 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 ~~(3)(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 128. 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 (h) Not refer a patient to the clinic if the clinic
14 performs magnetic resonance imaging, static radiographs,
15 computed tomography, or positron emission tomography. The term
16 "refer a patient" means the referral of one or more patients
17 of the medical or clinical director or a member of the medical
18 or clinical director's group practice to the clinic for
19 magnetic resonance imaging, static radiographs, computed
20 tomography, or positron emission tomography. A medical
21 director who is found to violate this paragraph commits a
22 felony of the third degree, punishable as provided in s.
23 775.082, s. 775.083, or s. 775.084.

24 ~~(2) Any business that becomes a clinic after~~
25 ~~commencing operations must, within 5 days after becoming a~~
26 ~~clinic, file a license application under this part and shall~~
27 ~~be subject to all provisions of this part applicable to a~~
28 ~~clinic.~~

29 (2)(3) Any contract to serve as a medical director or
30 a clinic director entered into or renewed by a physician or a
31 licensed health care practitioner in violation of this part is

1 void as contrary to public policy. This subsection shall apply
2 to contracts entered into or renewed on or after March 1,
3 2004.

4 ~~(3)(4)~~ All charges or reimbursement claims made by or
5 on behalf of a clinic that is required to be licensed under
6 this part, but that is not so licensed, or that is otherwise
7 operating in violation of this part, are unlawful charges, and
8 therefore are noncompensable and unenforceable.

9 ~~(4)(5)~~ In addition to the requirements of s. 408.812,
10 any person establishing, operating, or managing an unlicensed
11 clinic otherwise required to be licensed under this part or
12 part II of chapter 408, or any person who knowingly files a
13 false or misleading license application or license renewal
14 application, or false or misleading information related to
15 such application or department rule, commits a felony of the
16 third degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.

18 ~~(5)(6)~~ Any licensed health care provider who violates
19 this part is subject to discipline in accordance with this
20 chapter and his or her respective practice act.

21 ~~(7)~~ ~~The agency may fine, or suspend or revoke the~~
22 ~~license of, any clinic licensed under this part for operating~~
23 ~~in violation of the requirements of this part or the rules~~
24 ~~adopted by the agency.~~

25 ~~(8)~~ ~~The agency shall investigate allegations of~~
26 ~~noncompliance with this part and the rules adopted under this~~
27 ~~part.~~

28 ~~(6)(9)~~ Any person or entity providing health care
29 services which is not a clinic, as defined under s. 400.9905,
30 may voluntarily apply for a certificate of exemption from
31 licensure under its exempt status with the agency on a form

1 that sets forth its name or names and addresses, a statement
2 of the reasons why it cannot be defined as a clinic, and other
3 information deemed necessary by the agency. An exemption is
4 not transferable. The agency may charge an applicant for a
5 certificate of exemption in an amount equal to \$100 or the
6 actual cost of processing the certificate, whichever is less.

7 ~~(10) The clinic shall display its license in a~~
8 ~~conspicuous location within the clinic readily visible to all~~
9 ~~patients.~~

10 (7)~~(11)~~(a) Each clinic engaged in magnetic resonance
11 imaging services must be accredited by the Joint Commission on
12 Accreditation of Healthcare Organizations, the American
13 College of Radiology, or the Accreditation Association for
14 Ambulatory Health Care, within 1 year after licensure.
15 However, a clinic may request a single, 6-month extension if
16 it provides evidence to the agency establishing that, for good
17 cause shown, such clinic can not be accredited within 1 year
18 after licensure, and that such accreditation will be completed
19 within the 6-month extension. After obtaining accreditation as
20 required by this subsection, each such clinic must maintain
21 accreditation as a condition of renewal of its license.

22 (b) The agency may deny the application or revoke the
23 license of any entity formed for the purpose of avoiding
24 compliance with the accreditation provisions of this
25 subsection and whose principals were previously principals of
26 an entity that was unable to meet the accreditation
27 requirements within the specified timeframes. The agency may
28 adopt rules as to the accreditation of magnetic resonance
29 imaging clinics.

30 (8)~~(12)~~ The agency shall give full faith and credit
31 pertaining to any past variance and waiver granted to a

1 magnetic resonance imaging clinic from rule 64-2002, Florida
2 Administrative Code, by the Department of Health, until
3 September 2004. After that date, such clinic must request a
4 variance and waiver from the agency under s. 120.542.

5 ~~(9)(13)~~ In addition to the requirements of part II of
6 chapter 408, the clinic shall display a sign in a conspicuous
7 location within the clinic readily visible to all patients
8 indicating that, pursuant to s. 626.9892, the Department of
9 Financial Services may pay rewards of up to \$25,000 to persons
10 providing information leading to the arrest and conviction of
11 persons committing crimes investigated by the Division of
12 Insurance Fraud arising from violations of s. 440.105, s.
13 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
14 employee of the Division of Insurance Fraud may make
15 unannounced inspections of a clinic licensed under this part
16 as necessary to determine whether the clinic is in compliance
17 with this subsection. A licensed clinic shall allow full and
18 complete access to the premises to such authorized employee of
19 the division who makes an inspection to determine compliance
20 with this subsection.

21 Section 129. Section 400.994, Florida Statutes, is
22 repealed.

23 Section 130. Section 400.9945, Florida Statutes, is
24 repealed.

25 Section 131. Section 400.995, Florida Statutes, is
26 amended to read:

27 400.995 Agency administrative penalties.--

28 (1) In addition to the requirements of part II of
29 chapter 408, the agency may deny the application for a license
30 renewal, revoke and ~~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 | (3) Any action taken to correct a violation shall be
20 | 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 (4)(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 (5)(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 (6)(8) The agency, as an alternative to or in
12 conjunction with an administrative action against a clinic for
13 violations of this part and adopted rules, shall make a
14 reasonable attempt to discuss each violation and recommended
15 corrective action with the owner, medical director, or clinic
16 director of the clinic, prior to written notification. The
17 agency, instead of fixing a period within which the clinic
18 shall enter into compliance with standards, may request a plan
19 of corrective action from the clinic which demonstrates a good
20 faith effort to remedy each violation by a specific date,
21 subject to the approval of the agency.

22 ~~(9) Administrative fines paid by any clinic under this~~
23 ~~section shall be deposited into the Health Care Trust Fund.~~

24 ~~(10) If the agency issues a notice of intent to deny a~~
25 ~~license application after a temporary license has been issued~~
26 ~~pursuant to s. 400.991(3), the temporary license shall expire~~
27 ~~on the date of the notice and may not be extended during any~~
28 ~~proceeding for administrative or judicial review pursuant to~~
29 ~~chapter 120.~~

30 Section 132. Section 408.802, Florida Statutes, is
31 amended to read:

1 408.802 Applicability.--The provisions of this part
2 apply to the provision of services that require licensure as
3 defined in this part and to the following entities licensed,
4 registered, or certified by the agency, as described in
5 chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

6 (1) Laboratories authorized to perform testing under
7 the Drug-Free Workplace Act, as provided under ss. 112.0455
8 and 440.102.

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

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

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

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

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

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

19 (8) Hospitals, as provided under part I of chapter
20 395.

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

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

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

27 (12) Health care risk managers, as provided under part
28 I of chapter 395.

29 (13) Nursing homes, as provided under part II of
30 chapter 400.

31

- 1 (14) Assisted living facilities, as provided under
2 part I ~~III~~ of chapter 429 ~~400~~.
- 3 (15) Home health agencies, as provided under part III
4 ~~IV~~ of chapter 400.
- 5 (16) Nurse registries, as provided under part III ~~IV~~
6 of chapter 400.
- 7 (17) Companion services or homemaker services
8 providers, as provided under part III ~~IV~~ of chapter 400.
- 9 (18) Adult day care centers, as provided under part
10 III ~~V~~ of chapter 429 ~~400~~.
- 11 (19) Hospices, as provided under part IV ~~VI~~ of chapter
12 400.
- 13 (20) Adult family-care homes, as provided under part
14 II ~~VII~~ of chapter 429 ~~400~~.
- 15 (21) Homes for special services, as provided under
16 part V ~~VIII~~ of chapter 400.
- 17 (22) Transitional living facilities, as provided under
18 part V ~~VIII~~ of chapter 400.
- 19 (23) Prescribed pediatric extended care centers, as
20 provided under part VI ~~IX~~ of chapter 400.
- 21 (24) Home medical equipment providers, as provided
22 under part VII ~~X~~ of chapter 400.
- 23 (25) Intermediate care facilities for persons with
24 developmental disabilities, as provided under part VIII ~~XI~~ of
25 chapter 400.
- 26 (26) Health care services pools, as provided under
27 part IX ~~XII~~ of chapter 400.
- 28 (27) Health care clinics, as provided under part X
29 ~~XIII~~ of chapter 400.
- 30 (28) Clinical laboratories, as provided under part I
31 of chapter 483.

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

3 (30) Organ and tissue procurement agencies, as
4 provided under chapter 765.

5 Section 133. Section 408.832, Florida Statutes, is
6 amended to read:

7 408.832 Conflicts.--In case of conflict between the
8 provisions of part II of chapter 408 and the authorizing
9 statutes governing the licensure of health care providers by
10 the Agency for Health Care Administration found in s. 112.0455
11 and chapters 383, 390, 394, 395, 400, 429, 440, 483, and 765,
12 the provisions of part II of chapter 408 shall prevail.

13 Section 134. Paragraph (e) of subsection (4) of
14 section 409.221, Florida Statutes, is amended to read:

15 409.221 Consumer-directed care program.--

16 (4) CONSUMER-DIRECTED CARE.--

17 (e) Services.--Consumers shall use the budget
18 allowance only to pay for home and community-based services
19 that meet the consumer's long-term care needs and are a
20 cost-efficient use of funds. Such services may include, but
21 are not limited to, the following:

22 1. Personal care.

23 2. Homemaking and chores, including housework, meals,
24 shopping, and transportation.

25 3. Home modifications and assistive devices which may
26 increase the consumer's independence or make it possible to
27 avoid institutional placement.

28 4. Assistance in taking self-administered medication.

29 5. Day care and respite care services, including those
30 provided by nursing home facilities pursuant to s. 400.141(6)

31

1 or by adult day care facilities licensed pursuant to s.

2 429.907 ~~400.554~~.

3 6. Personal care and support services provided in an
4 assisted living facility.

5 Section 135. Paragraph (g) of subsection (2) of
6 section 409.815, Florida Statutes, is amended to read:

7 409.815 Health benefits coverage; limitations.--

8 (2) BENCHMARK BENEFITS.--In order for health benefits
9 coverage to qualify for premium assistance payments for an
10 eligible child under ss. 409.810-409.820, the health benefits
11 coverage, except for coverage under Medicaid and Medikids,
12 must include the following minimum benefits, as medically
13 necessary.

14 (g) Behavioral health services.--

15 1. Mental health benefits include:

16 a. Inpatient services, limited to not more than 30
17 inpatient days per contract year for psychiatric admissions,
18 or residential services in facilities licensed under s.
19 394.875~~(6)~~~~(8)~~ or s. 395.003 in lieu of inpatient psychiatric
20 admissions; however, a minimum of 10 of the 30 days shall be
21 available only for inpatient psychiatric services when
22 authorized by a physician; and

23 b. Outpatient services, including outpatient visits
24 for psychological or psychiatric evaluation, diagnosis, and
25 treatment by a licensed mental health professional, limited to
26 a maximum of 40 outpatient visits each contract year.

27 2. Substance abuse services include:

28 a. Inpatient services, limited to not more than 7
29 inpatient days per contract year for medical detoxification
30 only and 30 days of residential services; and
31

1 b. Outpatient services, including evaluation,
2 diagnosis, and treatment by a licensed practitioner, limited
3 to a maximum of 40 outpatient visits per contract year.

4 Section 136. Subsection (8) of section 409.905,
5 Florida Statutes, is amended to read:

6 409.905 Mandatory Medicaid services.--The agency may
7 make payments for the following services, which are required
8 of the state by Title XIX of the Social Security Act,
9 furnished by Medicaid providers to recipients who are
10 determined to be eligible on the dates on which the services
11 were provided. Any service under this section shall be
12 provided only when medically necessary and in accordance with
13 state and federal law. Mandatory services rendered by
14 providers in mobile units to Medicaid recipients may be
15 restricted by the agency. Nothing in this section shall be
16 construed to prevent or limit the agency from adjusting fees,
17 reimbursement rates, lengths of stay, number of visits, number
18 of services, or any other adjustments necessary to comply with
19 the availability of moneys and any limitations or directions
20 provided for in the General Appropriations Act or chapter 216.

21 (8) NURSING FACILITY SERVICES.--The agency shall pay
22 for 24-hour-a-day nursing and rehabilitative services for a
23 recipient in a nursing facility licensed under part II of
24 chapter 400 or in a rural hospital, as defined in s. 395.602,
25 or in a Medicare certified skilled nursing facility operated
26 by a hospital, as defined by s. 395.002(10)(~~11~~), that is
27 licensed under part I of chapter 395, and in accordance with
28 provisions set forth in s. 409.908(2)(a), which services are
29 ordered by and provided under the direction of a licensed
30 physician. However, if a nursing facility has been destroyed
31 or otherwise made uninhabitable by natural disaster or other

1 emergency and another nursing facility is not available, the
2 agency must pay for similar services temporarily in a hospital
3 licensed under part I of chapter 395 provided federal funding
4 is approved and available. The agency shall pay only for
5 bed-hold days if the facility has an occupancy rate of 95
6 percent or greater. The agency is authorized to seek any
7 federal waivers to implement this policy.

8 Section 137. Subsection (7) of section 409.907,
9 Florida Statutes, is amended to read:

10 409.907 Medicaid provider agreements.--The agency may
11 make payments for medical assistance and related services
12 rendered to Medicaid recipients only to an individual or
13 entity who has a provider agreement in effect with the agency,
14 who is performing services or supplying goods in accordance
15 with federal, state, and local law, and who agrees that no
16 person shall, on the grounds of handicap, race, color, or
17 national origin, or for any other reason, be subjected to
18 discrimination under any program or activity for which the
19 provider receives payment from the agency.

20 (7) The agency may require, as a condition of
21 participating in the Medicaid program and before entering into
22 the provider agreement, that the provider submit information,
23 in an initial and any required renewal applications,
24 concerning the professional, business, and personal background
25 of the provider and permit an onsite inspection of the
26 provider's service location by agency staff or other personnel
27 designated by the agency to perform this function. The agency
28 shall perform a random onsite inspection, within 60 days after
29 receipt of a fully complete new provider's application, of the
30 provider's service location prior to making its first payment
31 to the provider for Medicaid services to determine the

1 applicant's ability to provide the services that the applicant
2 is proposing to provide for Medicaid reimbursement. The agency
3 is not required to perform an onsite inspection of a provider
4 or program that is licensed by the agency, that provides
5 services under waiver programs for home and community-based
6 services, or that is licensed as a medical foster home by the
7 Department of Children and Family Services. As a continuing
8 condition of participation in the Medicaid program, a provider
9 shall immediately notify the agency of any current or pending
10 bankruptcy filing. Before entering into the provider
11 agreement, or as a condition of continuing participation in
12 the Medicaid program, the agency may also require that
13 Medicaid providers reimbursed on a fee-for-services basis or
14 fee schedule basis which is not cost-based, post a surety bond
15 not to exceed \$50,000 or the total amount billed by the
16 provider to the program during the current or most recent
17 calendar year, whichever is greater. For new providers, the
18 amount of the surety bond shall be determined by the agency
19 based on the provider's estimate of its first year's billing.
20 If the provider's billing during the first year exceeds the
21 bond amount, the agency may require the provider to acquire an
22 additional bond equal to the actual billing level of the
23 provider. A provider's bond shall not exceed \$50,000 if a
24 physician or group of physicians licensed under chapter 458,
25 chapter 459, or chapter 460 has a 50 percent or greater
26 ownership interest in the provider or if the provider is an
27 assisted living facility licensed under chapter 429. The bonds
28 permitted by this section are in addition to the bonds
29 referenced in s. 400.179(2)(~~5~~)(d). If the provider is a
30 corporation, partnership, association, or other entity, the
31 agency may require the provider to submit information

1 concerning the background of that entity and of any principal
2 of the entity, including any partner or shareholder having an
3 ownership interest in the entity equal to 5 percent or
4 greater, and any treating provider who participates in or
5 intends to participate in Medicaid through the entity. The
6 information must include:

7 (a) Proof of holding a valid license or operating
8 certificate, as applicable, if required by the state or local
9 jurisdiction in which the provider is located or if required
10 by the Federal Government.

11 (b) Information concerning any prior violation, fine,
12 suspension, termination, or other administrative action taken
13 under the Medicaid laws, rules, or regulations of this state
14 or of any other state or the Federal Government; any prior
15 violation of the laws, rules, or regulations relating to the
16 Medicare program; any prior violation of the rules or
17 regulations of any other public or private insurer; and any
18 prior violation of the laws, rules, or regulations of any
19 regulatory body of this or any other state.

20 (c) Full and accurate disclosure of any financial or
21 ownership interest that the provider, or any principal,
22 partner, or major shareholder thereof, may hold in any other
23 Medicaid provider or health care related entity or any other
24 entity that is licensed by the state to provide health or
25 residential care and treatment to persons.

26 (d) If a group provider, identification of all members
27 of the group and attestation that all members of the group are
28 enrolled in or have applied to enroll in the Medicaid program.

29 Section 138. Subsections (6) through (27) of section
30 429.02, Florida Statutes, are renumbered as subsections (5)

31

1 through (26), respectively, and present subsections (5) and
2 (12) of that section are amended to read:

3 429.02 Definitions.--When used in this part, the term:

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

7 ~~(11)(12)~~ "Extended congregate care" means acts beyond
8 those authorized in subsection ~~(16)(17)~~ that may be performed
9 pursuant to part I of chapter 464 by persons licensed
10 thereunder while carrying out their professional duties, and
11 other supportive services which may be specified by rule. The
12 purpose of such services is to enable residents to age in
13 place in a residential environment despite mental or physical
14 limitations that might otherwise disqualify them from
15 residency in a facility licensed under this part.

16 Section 139. Section 429.07, Florida Statutes, is
17 amended to read:

18 429.07 License required; fee, ~~display~~.--

19 (1) The requirements of part II of chapter 408 apply
20 to the provision of services that require licensure pursuant
21 to this part and part II of chapter 408 and to entities
22 licensed by or applying for such licensure from the agency
23 pursuant to this part. A license issued by the agency is
24 required in order to operate ~~for~~ an assisted living facility
25 ~~operating~~ in this state.

26 (2) Separate licenses shall be required for facilities
27 maintained in separate premises, even though operated under
28 the same management. A separate license shall not be required
29 for separate buildings on the same grounds.

30 (3) In addition to the requirements of s. 408.806,
31 each ~~Any~~ license granted by the agency must state ~~the maximum~~

1 ~~resident capacity of the facility,~~ the type of care for which
2 the license is granted, ~~the date the license is issued, the~~
3 ~~expiration date of the license, and any other information~~
4 ~~deemed necessary by the agency.~~ Licenses shall be issued for
5 one or more of the following categories of care: standard,
6 extended congregate care, limited nursing services, or limited
7 mental health.

8 (a) A standard license shall be issued to facilities
9 providing one or more of the personal services identified in
10 s. 429.02. Such facilities may also employ or contract with a
11 person licensed under part I of chapter 464 to administer
12 medications and perform other tasks as specified in s.
13 429.255.

14 (b) An extended congregate care license shall be
15 issued to facilities providing, directly or through contract,
16 services beyond those authorized in paragraph (a), including
17 acts performed pursuant to part I of chapter 464 by persons
18 licensed thereunder, and supportive services defined by rule
19 to persons who otherwise would be disqualified from continued
20 residence in a facility licensed under this part.

21 1. In order for extended congregate care services to
22 be provided in a facility licensed under this part, the agency
23 must first determine that all requirements established in law
24 and rule are met and must specifically designate, on the
25 facility's license, that such services may be provided and
26 whether the designation applies to all or part of a facility.
27 Such designation may be made at the time of initial licensure
28 or relicensure, or upon request in writing by a licensee under
29 this part and part II of chapter 408. Notification of approval
30 or denial of such request shall be made in accordance with
31 part II of chapter 408 ~~within 90 days after receipt of such~~

1 ~~request and all necessary documentation.~~ Existing facilities
2 qualifying to provide extended congregate care services must
3 have maintained a standard license and may not have been
4 subject to administrative sanctions during the previous 2
5 years, or since initial licensure if the facility has been
6 licensed for less than 2 years, for any of the following
7 reasons:

8 a. A class I or class II violation;

9 b. Three or more repeat or recurring class III
10 violations of identical or similar resident care standards as
11 specified in rule from which a pattern of noncompliance is
12 found by the agency;

13 c. Three or more class III violations that were not
14 corrected in accordance with the corrective action plan
15 approved by the agency;

16 d. Violation of resident care standards resulting in a
17 requirement to employ the services of a consultant pharmacist
18 or consultant dietitian;

19 e. Denial, suspension, or revocation of a license for
20 another facility under this part in which the applicant for an
21 extended congregate care license has at least 25 percent
22 ownership interest; or

23 f. Imposition of a moratorium pursuant to this part or
24 part II of chapter 408 on admissions or initiation of
25 injunctive proceedings.

26 2. Facilities that are licensed to provide extended
27 congregate care services shall maintain a written progress
28 report on each person who receives such services, which report
29 describes the type, amount, duration, scope, and outcome of
30 services that are rendered and the general status of the
31 resident's health. A registered nurse, or appropriate

1 | designee, representing the agency shall visit such facilities
2 | at least quarterly to monitor residents who are receiving
3 | extended congregate care services and to determine if the
4 | facility is in compliance with this part, part II of chapter
5 | 408, and ~~with~~ rules that relate to extended congregate care.
6 | One of these visits may be in conjunction with the regular
7 | survey. The monitoring visits may be provided through
8 | contractual arrangements with appropriate community agencies.
9 | A registered nurse shall serve as part of the team that
10 | inspects such facility. The agency may waive one of the
11 | required yearly monitoring visits for a facility that has been
12 | licensed for at least 24 months to provide extended congregate
13 | care services, if, during the inspection, the registered nurse
14 | determines that extended congregate care services are being
15 | provided appropriately, and if the facility has no class I or
16 | class II violations and no uncorrected class III violations.
17 | Before such decision is made, the agency shall consult with
18 | the long-term care ombudsman council for the area in which the
19 | facility is located to determine if any complaints have been
20 | made and substantiated about the quality of services or care.
21 | The agency may not waive one of the required yearly monitoring
22 | visits if complaints have been made and substantiated.

23 | 3. Facilities that are licensed to provide extended
24 | congregate care services shall:

25 | a. Demonstrate the capability to meet unanticipated
26 | resident service needs.

27 | b. Offer a physical environment that promotes a
28 | homelike setting, provides for resident privacy, promotes
29 | resident independence, and allows sufficient congregate space
30 | as defined by rule.
31 |

1 c. Have sufficient staff available, taking into
2 account the physical plant and firesafety features of the
3 building, to assist with the evacuation of residents in an
4 emergency, as necessary.

5 d. Adopt and follow policies and procedures that
6 maximize resident independence, dignity, choice, and
7 decisionmaking to permit residents to age in place to the
8 extent possible, so that moves due to changes in functional
9 status are minimized or avoided.

10 e. Allow residents or, if applicable, a resident's
11 representative, designee, surrogate, guardian, or attorney in
12 fact to make a variety of personal choices, participate in
13 developing service plans, and share responsibility in
14 decisionmaking.

15 f. Implement the concept of managed risk.

16 g. Provide, either directly or through contract, the
17 services of a person licensed pursuant to part I of chapter
18 464.

19 h. In addition to the training mandated in s. 429.52,
20 provide specialized training as defined by rule for facility
21 staff.

22 4. Facilities licensed to provide extended congregate
23 care services are exempt from the criteria for continued
24 residency as set forth in rules adopted under s. 429.41.
25 Facilities so licensed shall adopt their own requirements
26 within guidelines for continued residency set forth by ~~the~~
27 ~~department in~~ rule. However, such facilities may not serve
28 residents who require 24-hour nursing supervision. Facilities
29 licensed to provide extended congregate care services shall
30 provide each resident with a written copy of facility policies
31 governing admission and retention.

1 5. The primary purpose of extended congregate care
2 services is to allow residents, as they become more impaired,
3 the option of remaining in a familiar setting from which they
4 would otherwise be disqualified for continued residency. A
5 facility licensed to provide extended congregate care services
6 may also admit an individual who exceeds the admission
7 criteria for a facility with a standard license, if the
8 individual is determined appropriate for admission to the
9 extended congregate care facility.

10 6. Before admission of an individual to a facility
11 licensed to provide extended congregate care services, the
12 individual must undergo a medical examination as provided in
13 s. 429.26(4) and the facility must develop a preliminary
14 service plan for the individual.

15 7. When a facility can no longer provide or arrange
16 for services in accordance with the resident's service plan
17 and needs and the facility's policy, the facility shall make
18 arrangements for relocating the person in accordance with s.
19 429.28(1)(k).

20 8. Failure to provide extended congregate care
21 services may result in denial of extended congregate care
22 license renewal.

23 9. No later than January 1 of each year, the
24 department, in consultation with the agency, shall prepare and
25 submit to the Governor, the President of the Senate, the
26 Speaker of the House of Representatives, and the chairs of
27 appropriate legislative committees, a report on the status of,
28 and recommendations related to, extended congregate care
29 services. The status report must include, but need not be
30 limited to, the following information:
31

1 a. A description of the facilities licensed to provide
2 such services, including total number of beds licensed under
3 this part.

4 b. The number and characteristics of residents
5 receiving such services.

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

8 d. An analysis of deficiencies cited during licensure
9 inspections.

10 e. The number of residents who required extended
11 congregate care services at admission and the source of
12 admission.

13 f. Recommendations for statutory or regulatory
14 changes.

15 g. The availability of extended congregate care to
16 state clients residing in facilities licensed under this part
17 and in need of additional services, and recommendations for
18 appropriations to subsidize extended congregate care services
19 for such persons.

20 h. Such other information as the department considers
21 appropriate.

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

25 1. In order for limited nursing services to be
26 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. Such
30 designation may be made at the time of initial licensure or
31 relicensure, or upon request in writing by a licensee under

1 | this part and part II of chapter 408. Notification of approval
2 | or denial of such request shall be made in accordance with
3 | part II of chapter 408 ~~within 90 days after receipt of such~~
4 | ~~request and all necessary documentation~~. Existing facilities
5 | qualifying to provide limited nursing services shall have
6 | maintained a standard license and may not have been subject to
7 | administrative sanctions that affect the health, safety, and
8 | welfare of residents for the previous 2 years or since initial
9 | licensure if the facility has been licensed for less than 2
10 | years.

11 | 2. Facilities that are licensed to provide limited
12 | nursing services shall maintain a written progress report on
13 | each person who receives such nursing services, which report
14 | describes the type, amount, duration, scope, and outcome of
15 | services that are rendered and the general status of the
16 | resident's health. A registered nurse representing the agency
17 | shall visit such facilities at least twice a year to monitor
18 | residents who are receiving limited nursing services and to
19 | determine if the facility is in compliance with applicable
20 | provisions of this part, part II of chapter 408, and ~~with~~
21 | related rules. The monitoring visits may be provided through
22 | contractual arrangements with appropriate community agencies.
23 | A registered nurse shall also serve as part of the team that
24 | inspects such facility.

25 | 3. A person who receives limited nursing services
26 | under this part must meet the admission criteria established
27 | by the agency for assisted living facilities. When a resident
28 | no longer meets the admission criteria for a facility licensed
29 | under this part, arrangements for relocating the person shall
30 | be made in accordance with s. 429.28(1)(k), unless the
31 |

1 facility is licensed to provide extended congregate care
2 services.

3 (4) 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 established
7 by rule.

8 (a) The biennial license fee required of a facility is
9 \$300 per license, with an additional fee of \$50 per resident
10 based on the total licensed resident capacity of the facility,
11 except that no additional fee will be assessed for beds
12 designated for recipients of optional state supplementation
13 payments provided for in s. 409.212. The total fee may not
14 exceed \$10,000, ~~no part of which shall be returned to the~~
15 ~~facility. The agency shall adjust the per bed license fee and~~
16 ~~the total licensure fee annually by not more than the change~~
17 ~~in the consumer price index based on the 12 months immediately~~
18 ~~preceding the increase.~~

19 (b) In addition to the total fee assessed under
20 paragraph (a), the agency shall require facilities that are
21 licensed to provide extended congregate care services under
22 this part to pay an additional fee per licensed facility. The
23 amount of the biennial fee shall be \$400 per license, with an
24 additional fee of \$10 per resident based on the total licensed
25 resident capacity of the facility. ~~No part of this fee shall~~
26 ~~be returned to the facility. The agency may adjust the per bed~~
27 ~~license fee and the annual license fee once each year by not~~
28 ~~more than the average rate of inflation for the 12 months~~
29 ~~immediately preceding the increase.~~

30 (c) In addition to the total fee assessed under
31 paragraph (a), the agency shall require facilities that are

1 licensed to provide limited nursing services under this part
2 to pay an additional fee per licensed facility. The amount of
3 the biennial fee shall be \$250 per license, with an additional
4 fee of \$10 per resident based on the total licensed resident
5 capacity of the facility. ~~No part of this fee shall be~~
6 ~~returned to the facility. The agency may adjust the per bed~~
7 ~~license fee and the biennial license fee once each year by not~~
8 ~~more than the average rate of inflation for the 12 months~~
9 ~~immediately preceding the increase.~~

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

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

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

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

23 Section 140. Subsection (1) of section 429.075,
24 Florida Statutes, is amended to read:

25 429.075 Limited mental health license.--An assisted
26 living facility that serves three or more mental health
27 residents must obtain a limited mental health license.

28 (1) To obtain a limited mental health license, a
29 facility must hold a standard license as an assisted living
30 facility, must not have any current uncorrected deficiencies
31 or violations, and must ensure that, within 6 months after

1 receiving a limited mental health license, the facility
2 administrator and the staff of the facility who are in direct
3 contact with mental health residents must complete training of
4 no less than 6 hours related to their duties. Such designation
5 may be made at the time of initial licensure or relicensure or
6 upon request in writing by a licensee under this part and part
7 II of chapter 408. Notification of approval or denial of such
8 request shall be made in accordance with this part, part II of
9 chapter 408, and applicable rules. This training will be
10 provided by or approved by the Department of Children and
11 Family Services.

12 Section 141. Section 429.08, Florida Statutes, is
13 amended to read:

14 429.08 Unlicensed facilities; referral of person for
15 residency to unlicensed facility; penalties; verification of
16 licensure status.--

17 (1)(a) This section applies to the unlicensed
18 operation of an assisted living facility in addition to the
19 requirements of part II of chapter 408. It is unlawful to own,
20 operate, or maintain an assisted living facility without
21 obtaining a license under 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 (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. 429.19.~~

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. 429.19, 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. 429.14 and 429.19.~~

26 ~~(e)(h) Any person aware of the operation of an~~
27 ~~unlicensed assisted living facility must report that facility~~
28 ~~to the agency.~~ The agency shall provide to the department's
29 elder 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 Quality Assurance ~~Facility Regulation~~ of
16 | the agency.

17 | ~~(3)(2)~~ It is unlawful to knowingly refer a person for
18 | residency to an unlicensed assisted living facility; to an
19 | assisted living facility the license of which is under denial
20 | or has been suspended or revoked; or to an assisted living
21 | facility that has a moratorium pursuant to part II of chapter
22 | 408 on admissions. Any person who violates this subsection
23 | commits a noncriminal violation, punishable by a fine not
24 | exceeding \$500 as provided in s. 775.083.

25 | (a) Any health care practitioner, as defined in s.
26 | 456.001, who is aware of the operation of an unlicensed
27 | facility shall report that facility to the agency. Failure to
28 | report a facility that the practitioner knows or has
29 | reasonable cause to suspect is unlicensed shall be reported to
30 | the practitioner's licensing board.

31 |

1 (b) Any hospital or community mental health center
2 licensed under chapter 395 or chapter 394 which knowingly
3 discharges a patient or client to an unlicensed facility is
4 subject to sanction by the agency.

5 (c) Any employee of the agency or department, or the
6 Department of Children and Family Services, who knowingly
7 refers a person for residency to an unlicensed facility; to a
8 facility the license of which is under denial or has been
9 suspended or revoked; or to a facility that has a moratorium
10 pursuant to part II of chapter 408 ~~on admissions~~ is subject to
11 disciplinary action by the agency or department, or the
12 Department of Children and Family Services.

13 (d) The employer of any person who is under contract
14 with the agency or department, or the Department of Children
15 and Family Services, and who knowingly refers a person for
16 residency to an unlicensed facility; to a facility the license
17 of which is under denial or has been suspended or revoked; or
18 to a facility that has a moratorium pursuant to part II of
19 chapter 408 ~~on admissions~~ shall be fined and required to
20 prepare a corrective action plan designed to prevent such
21 referrals.

22 (e) The agency shall provide the department and the
23 Department of Children and Family Services with a list of
24 licensed facilities within each county and shall update the
25 list at least quarterly.

26 (f) At least annually, the agency shall notify, in
27 appropriate trade publications, physicians licensed under
28 chapter 458 or chapter 459, hospitals licensed under chapter
29 395, nursing home facilities licensed under part II of chapter
30 400, and employees of the agency or the department, or the
31 Department of Children and Family Services, who are

1 responsible for referring persons for residency, that it is
2 unlawful to knowingly refer a person for residency to an
3 unlicensed assisted living facility and shall notify them of
4 the penalty for violating such prohibition. The department and
5 the Department of Children and Family Services shall, in turn,
6 notify service providers under contract to the respective
7 departments who have responsibility for resident referrals to
8 facilities. Further, the notice must direct each noticed
9 facility and individual to contact the appropriate agency
10 office in order to verify the licensure status of any facility
11 prior to referring any person for residency. Each notice must
12 include the name, telephone number, and mailing address of the
13 appropriate office to contact.

14 Section 142. Section 429.11, Florida Statutes, is
15 amended to read:

16 429.11 Initial application for license; provisional
17 license.--

18 (1) Each applicant for licensure must comply with all
19 provisions of part II of chapter 408 and must: ~~Application for~~
20 ~~a license shall be made to the agency on forms furnished by it~~
21 ~~and shall be accompanied by the appropriate license fee.~~

22 ~~(2) The applicant may be an individual owner, a~~
23 ~~corporation, a partnership, a firm, an association, or a~~
24 ~~governmental entity.~~

25 ~~(3) The application must be signed by the applicant~~
26 ~~under oath and must contain the following:~~

27 ~~(a) The name, address, date of birth, and social~~
28 ~~security number of the applicant and the name by which the~~
29 ~~facility is to be known. If the applicant is a firm,~~
30 ~~partnership, or association, the application shall contain the~~
31 ~~name, address, date of birth, and social security number of~~

1 ~~every member thereof. If the applicant is a corporation, the~~
2 ~~application shall contain the corporation's name and address;~~
3 ~~the name, address, date of birth, and social security number~~
4 ~~of each of its directors and officers; and the name and~~
5 ~~address of each person having at least a 5 percent ownership~~
6 ~~interest in the corporation.~~

7 ~~(b) The name and address of any professional service,~~
8 ~~firm, association, partnership, or corporation that is to~~
9 ~~provide goods, leases, or services to the facility if a~~
10 ~~5 percent or greater ownership interest in the service, firm,~~
11 ~~association, partnership, or corporation is owned by a person~~
12 ~~whose name must be listed on the application under paragraph~~
13 ~~(a).~~

14 ~~(c) The name and address of any long term care~~
15 ~~facility with which the applicant, administrator, or financial~~
16 ~~officer has been affiliated through ownership or employment~~
17 ~~within 5 years of the date of this license application; and a~~
18 ~~signed affidavit disclosing any financial or ownership~~
19 ~~interest that the applicant, or any person listed in paragraph~~
20 ~~(a), holds or has held within the last 5 years in any facility~~
21 ~~licensed under this part, or in any other entity licensed by~~
22 ~~this state or another state to provide health or residential~~
23 ~~care, which facility or entity closed or ceased to operate as~~
24 ~~a result of financial problems, or has had a receiver~~
25 ~~appointed or a license denied, suspended or revoked, or was~~
26 ~~subject to a moratorium on admissions, or has had an~~
27 ~~injunctive proceeding initiated against it.~~

28 ~~(d) A description and explanation of any exclusions,~~
29 ~~permanent suspensions, or terminations of the applicant from~~
30 ~~the Medicare or Medicaid programs. Proof of compliance with~~
31 ~~disclosure of ownership and control interest requirements of~~

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)~~ Identify ~~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)~~ The applicant shall provide proof of liability
28 insurance as defined in s. 624.605.

29 ~~(3)(7)~~ If the applicant is a community residential
30 home, the applicant must provide proof that it has met the
31 requirements specified in chapter 419.

1 ~~(8) The applicant must provide the agency with proof~~
2 ~~of legal right to occupy the property.~~

3 ~~(4)(9)~~ The applicant must furnish proof that the
4 facility has received a satisfactory firesafety inspection.
5 The local authority having jurisdiction or the State Fire
6 Marshal must conduct the inspection within 30 days after
7 written request by the applicant.

8 ~~(5)(10)~~ The applicant must furnish documentation of a
9 satisfactory sanitation inspection of the facility by the
10 county health department.

11 ~~(11) The applicant must furnish proof of compliance~~
12 ~~with level 2 background screening as required under s.~~
13 ~~429.174.~~

14 ~~(6)(12)~~ In addition to the license categories
15 available in s. 408.808, a provisional license may be issued
16 to an applicant making initial application for licensure or
17 making application for a change of ownership. A provisional
18 license shall be limited in duration to a specific period of
19 time not to exceed 6 months, as determined by the agency.

20 ~~(7)(13)~~ A county or municipality may not issue an
21 occupational license that is being obtained for the purpose of
22 operating a facility regulated under this part without first
23 ascertaining that the applicant has been licensed to operate
24 such facility at the specified location or locations by the
25 agency. The agency shall furnish to local agencies responsible
26 for issuing occupational licenses sufficient instruction for
27 making such determinations.

28 Section 143. Section 429.12, Florida Statutes, is
29 amended to read:

30 429.12 Sale or transfer of ownership of a
31 facility.--It is the intent of the Legislature to protect the

1 | rights of the residents of an assisted living facility when
2 | the facility is sold or the ownership thereof is transferred.
3 | Therefore, in addition to the requirements of part II of
4 | chapter 408, whenever a facility is sold or the ownership
5 | thereof is transferred, including leasing:

6 | ~~(1) The transferee shall make application to the~~
7 | ~~agency for a new license at least 60 days before the date of~~
8 | ~~transfer of ownership. The application must comply with the~~
9 | ~~provisions of s. 429.11.~~

10 | ~~(2)(a) The transferor shall notify the agency in~~
11 | ~~writing at least 60 days before the date of transfer of~~
12 | ~~ownership.~~

13 | ~~(1)(b)~~ The transferee ~~new owner~~ shall notify the
14 | residents, in writing, of the change transfer of ownership
15 | within 7 days after ~~of his or her~~ receipt of the new license.

16 | ~~(3) The transferor shall be responsible and liable~~
17 | ~~for:~~

18 | ~~(a) The lawful operation of the facility and the~~
19 | ~~welfare of the residents domiciled in the facility until the~~
20 | ~~date the transferee is licensed by the agency.~~

21 | ~~(b) Any and all penalties imposed against the facility~~
22 | ~~for violations occurring before the date of transfer of~~
23 | ~~ownership unless the penalty imposed is a moratorium on~~
24 | ~~admissions or denial of licensure. The moratorium on~~
25 | ~~admissions or denial of licensure remains in effect after the~~
26 | ~~transfer of ownership, unless the agency has approved the~~
27 | ~~transferee's corrective action plan or the conditions which~~
28 | ~~created the moratorium or denial have been corrected, and may~~
29 | ~~be grounds for denial of license to the transferee in~~
30 | ~~accordance with chapter 120.~~

31 |

1 ~~(c) Any outstanding liability to the state, unless the~~
2 ~~transferee has agreed, as a condition of sale or transfer, to~~
3 ~~accept the outstanding liabilities and to guarantee payment~~
4 ~~therefor; except that, if the transferee fails to meet these~~
5 ~~obligations, the transferor shall remain liable for the~~
6 ~~outstanding liability.~~

7 ~~(2)(4)~~ The transferor of a facility the license of
8 which is denied pending an administrative hearing shall, as a
9 part of the written change-of-ownership ~~transfer of ownership~~
10 contract, advise the transferee that a plan of correction must
11 be submitted by the transferee and approved by the agency at
12 least 7 days before the change ~~transfer~~ of ownership and that
13 failure to correct the condition which resulted in the
14 moratorium pursuant to part II of chapter 408 on admissions or
15 denial of licensure is grounds for denial of the transferee's
16 license.

17 ~~(5) The transferee must provide the agency with proof~~
18 ~~of legal right to occupy the property before a license may be~~
19 ~~issued. Proof may include, but is not limited to, copies of~~
20 ~~warranty deeds, or copies of lease or rental agreements,~~
21 ~~contracts for deeds, quitclaim deeds, or other such~~
22 ~~documentation.~~

23 Section 144. Section 429.14, Florida Statutes, is
24 amended to read:

25 429.14 ~~Denial, revocation, or suspension of license;~~
26 ~~imposition of Administrative penalties fine; grounds.--~~

27 (1) In addition to the requirements of part II of
28 chapter 408, the agency may deny, revoke, and ~~or~~ suspend any
29 license issued under this part and, ~~or~~ impose an
30 administrative fine in the manner provided in chapter 120
31 against a licensee of an assisted living facility for a

1 | violation of any provision of this part, part II of chapter
2 | 408, or applicable rules, or for any of the following actions
3 | by a licensee of an assisted living facility, for the actions
4 | of any person subject to level 2 background screening under s.
5 | 408.809 ~~s. 429.174~~, or for the actions of any facility
6 | employee:
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. 429.19:
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. 408.809 ~~s. 429.174(1)~~ does not
28 | meet the screening standards of s. 435.04 or that the facility
29 | is retaining an employee subject to level 1 background
30 | screening standards under ~~s. 429.174(2)~~ who does not meet the
31 |

1 screening 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 ~~429.174, or that the applicant has been excluded, permanently~~
24 ~~suspended, or terminated from the Medicaid or Medicare~~
25 ~~programs.~~

26 (j)(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 ~~(l) Exclusion, permanent suspension, or termination~~
2 ~~from the Medicare or Medicaid programs.~~

3 ~~(k)(m)~~ Knowingly operating any unlicensed facility or
4 providing without a license any service that must be licensed
5 under this chapter or chapter 400.

6 ~~(l)(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 ~~on admissions~~; or had an
31

1 injunctive proceeding initiated against it; ~~or has an~~
2 ~~outstanding fine assessed under this chapter or chapter 400.~~

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 or part II of
11 chapter 408, in which the agency claims that the facility
12 owner or an employee of the facility has threatened the
13 health, safety, or welfare of a resident of the facility be
14 heard by the Division of Administrative Hearings of the
15 Department of Management Services within 120 days after
16 receipt of the facility's request for a hearing, unless that
17 time limitation is waived by both parties. The administrative
18 law judge must render a decision within 30 days after receipt
19 of a proposed 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 145. Section 429.15, Florida Statutes, is
5 repealed.

6 Section 146. Section 429.17, Florida Statutes, is
7 amended to read:

8 429.17 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. 429.174.~~

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. 429.11 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. 429.47(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)~~ In addition to the license categories available
30 in s. 408.808, a conditional license may be issued to an
31 applicant for license renewal if the applicant fails to meet

1 all standards and requirements for licensure. A conditional
2 license issued under this subsection shall be limited in
3 duration to a specific period of time not to exceed 6 months,
4 as determined by the agency, and shall be accompanied by an
5 agency-approved plan of correction.

6 ~~(5)(6)~~ When an extended care or limited nursing
7 license is requested during a facility's biennial license
8 period, the fee shall be prorated in order to permit the
9 additional license to expire at the end of the biennial
10 license period. The fee shall be calculated as of the date the
11 additional license application is received by the agency.

12 ~~(6)(7)~~ The department may by rule establish renewal
13 procedures, identify forms, and specify documentation
14 necessary to administer this section. The agency, in
15 consultation with the department, may adopt rules to
16 administer the requirements of part II of chapter 408.

17 Section 147. Section 429.174, Florida Statutes, is
18 amended to read:

19 429.174 Background screening; exemptions.--

20 ~~(1)(a) Level 2 background screening must be conducted~~
21 ~~on each of the following persons, who shall be considered~~
22 ~~employees for the purposes of conducting screening under~~
23 ~~chapter 435:~~

24 1. ~~The facility owner if an individual, the~~
25 ~~administrator, and the financial officer.~~

26 2. ~~An officer or board member if the facility owner is~~
27 ~~a firm, corporation, partnership, or association, or any~~
28 ~~person owning 5 percent or more of the facility if the agency~~
29 ~~has probable cause to believe that such person has been~~
30 ~~convicted of any offense prohibited by s. 435.04. For each~~
31 ~~officer, board member, or person owning 5 percent or more who~~

1 ~~has been convicted of any such offense, the facility shall~~
2 ~~submit to the agency a description and explanation of the~~
3 ~~conviction at the time of license application. This~~
4 ~~subparagraph does not apply to a board member of a~~
5 ~~not for profit corporation or organization if the board member~~
6 ~~serves solely in a voluntary capacity, does not regularly take~~
7 ~~part in the day to day operational decisions of the~~
8 ~~corporation or organization, receives no remuneration for his~~
9 ~~or her services, and has no financial interest and has no~~
10 ~~family members with a financial interest in the corporation or~~
11 ~~organization, provided that the board member and facility~~
12 ~~submit a statement affirming that the board member's~~
13 ~~relationship to the facility satisfies the requirements of~~
14 ~~this subparagraph.~~

15 ~~(b) Proof of compliance with level 2 screening~~
16 ~~standards which has been submitted within the previous 5 years~~
17 ~~to meet any facility or professional licensure requirements of~~
18 ~~the agency or the Department of Health satisfies the~~
19 ~~requirements of this subsection, provided that such proof is~~
20 ~~accompanied, under penalty of perjury, by an affidavit of~~
21 ~~compliance with the provisions of chapter 435. Proof of~~
22 ~~compliance with the background screening requirements of the~~
23 ~~Financial Services Commission and the Office of Insurance~~
24 ~~Regulation for applicants for a certificate of authority to~~
25 ~~operate a continuing care retirement community under chapter~~
26 ~~651, submitted within the last 5 years, satisfies the~~
27 ~~Department of Law Enforcement and Federal Bureau of~~
28 ~~Investigation portions of a level 2 background check.~~

29 ~~(c) The agency may grant a provisional license to a~~
30 ~~facility applying for an initial license when each individual~~
31 ~~required by this subsection to undergo screening has completed~~

1 ~~the Department of Law Enforcement background checks, but has~~
2 ~~not yet received results from the Federal Bureau of~~
3 ~~Investigation, or when a request for an exemption from~~
4 ~~disqualification has been submitted to the agency pursuant to~~
5 ~~s. 435.07, but a response has not been issued.~~

6 ~~(2)~~ The owner or administrator of an assisted living
7 facility must conduct level 1 background screening, as set
8 forth in chapter 435, on all employees hired on or after
9 October 1, 1998, who perform personal services as defined in
10 s. 429.02~~(16)~~~~(17)~~. The agency may exempt an individual from
11 employment disqualification as set forth in chapter 435. Such
12 persons shall be considered as having met this requirement if:

13 ~~(1)(a)~~ Proof of compliance with level 1 screening
14 requirements obtained to meet any professional license
15 requirements in this state is provided and accompanied, under
16 penalty of perjury, by a copy of the person's current
17 professional license and an affidavit of current compliance
18 with the background screening requirements.

19 ~~(2)(b)~~ The person required to be screened has been
20 continuously employed in the same type of occupation for which
21 the person is seeking employment without a breach in service
22 which exceeds 180 days, and proof of compliance with the level
23 1 screening requirement which is no more than 2 years old is
24 provided. Proof of compliance shall be provided directly from
25 one employer or contractor to another, and not from the person
26 screened. Upon request, a copy of screening results shall be
27 provided by the employer retaining documentation of the
28 screening to the person screened.

29 ~~(3)(c)~~ The person required to be screened is employed
30 by a corporation or business entity or related corporation or
31 business entity that owns, operates, or manages more than one

1 facility or agency licensed under this chapter, and for whom a
2 level 1 screening was conducted by the corporation or business
3 entity as a condition of initial or continued employment.

4 Section 148. Section 429.176, Florida Statutes, is
5 amended to read:

6 429.176 Notice of change of administrator.--If, during
7 the period for which a license is issued, the owner changes
8 administrators, the owner must notify the agency of the change
9 within 10 days and provide documentation within 90 days that
10 the new administrator has completed the applicable core
11 educational requirements under s. 429.52. ~~Background screening~~
12 ~~shall be completed on any new administrator as specified in s.~~
13 ~~429.174.~~

14 Section 149. Section 429.18, Florida Statutes, is
15 amended to read:

16 429.18 Disposition of fees and administrative fines.--

17 ~~(1) Income from license fees, inspection fees, late~~
18 ~~fees, and administrative fines collected under this part~~
19 ~~generated pursuant to ss. 429.07, 429.08, 429.17, 429.19, and~~
20 ~~429.31 shall be deposited in the Health Care Trust Fund~~
21 ~~administered by the agency. Such funds shall be directed to~~
22 and used by the agency for the following purposes:

23 ~~(1)(a)~~ Up to 50 percent of the trust funds accrued
24 each fiscal year under this part may be used to offset the
25 expenses of receivership, pursuant to s. 429.22, if the court
26 determines that the income and assets of the facility are
27 insufficient to provide for adequate management and operation.

28 ~~(2)(b)~~ An amount of \$5,000 of the trust funds accrued
29 each year under this part shall be allocated to pay for
30 inspection-related physical and mental health examinations
31 requested by the agency pursuant to s. 429.26 for residents

1 | who are either recipients of supplemental security income or
2 | have monthly incomes not in excess of the maximum combined
3 | federal and state cash subsidies available to supplemental
4 | security income recipients, as provided for in s. 409.212.
5 | Such funds shall only be used where the resident is ineligible
6 | for Medicaid.

7 | ~~(3)(c)~~ Any trust funds accrued each year under this
8 | part and not used for the purposes specified in subsections
9 | ~~(1) and (2) paragraphs (a) and (b)~~ shall be used to offset the
10 | costs of the licensure program, ~~including the costs of~~
11 | ~~conducting background investigations~~, verifying information
12 | submitted, defraying the costs of processing the names of
13 | applicants, and conducting inspections and monitoring visits
14 | pursuant to this part and part II of chapter 408.

15 | ~~(2) Income from fees generated pursuant to s.~~
16 | ~~429.41(5) shall be deposited in the Health Care Trust Fund and~~
17 | ~~used to offset the costs of printing and postage.~~

18 | Section 150. Section 429.19, Florida Statutes, is
19 | amended to read:

20 | 429.19 Violations; imposition of administrative fines;
21 | grounds.--

22 | (1) In addition to the requirements of part II of
23 | chapter 408, the agency shall impose an administrative fine in
24 | the manner provided in chapter 120 for the violation of any
25 | provision of this part, part II of chapter 408, and applicable
26 | rules any of the actions or violations as set forth within
27 | ~~this section~~ by an assisted living facility, for the actions
28 | of any person subject to level 2 background screening under s.
29 | 408.809 s. 429.174, for the actions of any facility employee,
30 | or for an intentional or negligent act seriously affecting the
31 | health, safety, or welfare of a resident of the facility.

1 (2) Each violation of this part and adopted rules
2 shall be classified according to the nature of the violation
3 and the gravity of its probable effect on facility residents.
4 The agency shall indicate the classification on the written
5 notice of the violation as follows:

6 (a) Class "I" violations are those conditions or
7 occurrences related to the operation and maintenance of a
8 facility or to the personal care of residents which the agency
9 determines present an imminent danger to the residents or
10 guests of the facility or a substantial probability that death
11 or serious physical or emotional harm would result therefrom.
12 The condition or practice constituting a class I violation
13 shall be abated or eliminated within 24 hours, unless a fixed
14 period, as determined by the agency, is required for
15 correction. The agency shall impose an administrative fine for
16 a cited class I violation in an amount not less than \$5,000
17 and not exceeding \$10,000 for each violation. A fine may be
18 levied notwithstanding the correction of the violation.

19 (b) Class "II" violations are those conditions or
20 occurrences related to the operation and maintenance of a
21 facility or to the personal care of residents which the agency
22 determines directly threaten the physical or emotional health,
23 safety, or security of the facility residents, other than
24 class I violations. The agency shall impose an administrative
25 fine for a cited class II violation in an amount not less than
26 \$1,000 and not exceeding \$5,000 for each violation. A fine
27 shall be levied notwithstanding the correction of the
28 violation.

29 (c) Class "III" violations are those conditions or
30 occurrences related to the operation and maintenance of a
31 facility or to the personal care of residents which the agency

1 determines indirectly or potentially threaten the physical or
2 emotional health, safety, or security of facility residents,
3 other than class I or class II violations. The agency shall
4 impose an administrative fine for a cited class III violation
5 in an amount not less than \$500 and not exceeding \$1,000 for
6 each violation. A citation for a class III violation must
7 specify the time within which the violation is required to be
8 corrected. If a class III violation is corrected within the
9 time specified, no fine may be imposed, unless it is a
10 repeated offense.

11 (d) Class "IV" violations are those conditions or
12 occurrences related to the operation and maintenance of a
13 building or to required reports, forms, or documents that do
14 not have the potential of negatively affecting residents.
15 These violations are of a type that the agency determines do
16 not threaten the health, safety, or security of residents of
17 the facility. The agency shall impose an administrative fine
18 for a cited class IV violation in an amount not less than \$100
19 and not exceeding \$200 for each violation. A citation for a
20 class IV violation must specify the time within which the
21 violation is required to be corrected. If a class IV violation
22 is corrected within the time specified, no fine shall be
23 imposed. Any class IV violation that is corrected during the
24 time an agency survey is being conducted will be identified as
25 an agency finding and not as a violation.

26 (3) For purposes of this section, in determining if a
27 penalty is to be imposed and in fixing the amount of the fine,
28 the agency shall consider the following factors:

29 (a) The gravity of the violation, including the
30 probability that death or serious physical or emotional harm
31 to a resident will result or has resulted, the severity of the

1 action or potential harm, and the extent to which the
2 provisions of the applicable laws or rules were violated.

3 (b) Actions taken by the owner or administrator to
4 correct violations.

5 (c) Any previous violations.

6 (d) The financial benefit to the facility of
7 committing or continuing the violation.

8 (e) The licensed capacity of the facility.

9 (4) Each day of continuing violation after the date
10 fixed for termination of the violation, as ordered by the
11 agency, constitutes an additional, separate, and distinct
12 violation.

13 (5) Any action taken to correct a violation shall be
14 documented in writing by the owner or administrator of the
15 facility and verified through followup visits by agency
16 personnel. The agency may impose a fine and, in the case of an
17 owner-operated facility, revoke or deny a facility's license
18 when a facility administrator fraudulently misrepresents
19 action taken to correct a violation.

20 ~~(6) For fines that are upheld following administrative~~
21 ~~or judicial review, the violator shall pay the fine, plus~~
22 ~~interest at the rate as specified in s. 55.03, for each day~~
23 ~~beyond the date set by the agency for payment of the fine.~~

24 ~~(7) Any unlicensed facility that continues to operate~~
25 ~~after agency notification is subject to a \$1,000 fine per day.~~

26 ~~(8) Any licensed facility whose owner or administrator~~
27 ~~concurrently operates an unlicensed facility shall be subject~~
28 ~~to an administrative fine of \$5,000 per day.~~

29 ~~(6)(9)~~ Any facility whose owner fails to apply for a
30 change-of-ownership license in accordance with part II of
31

1 chapter 408 s. 429.12 and operates the facility under the new
2 ownership is subject to a fine of \$5,000.

3 ~~(7)(10)~~ In addition to any administrative fines
4 imposed, the agency may assess a survey fee, equal to the
5 lesser of one half of the facility's biennial license and bed
6 fee or \$500, to cover the cost of conducting initial complaint
7 investigations that result in the finding of a violation that
8 was the subject of the complaint or monitoring visits
9 conducted under s. 429.28(3)(c) to verify the correction of
10 the violations.

11 ~~(8)(11)~~ The agency, as an alternative to or in
12 conjunction with an administrative action against a facility
13 for violations of this part and adopted rules, shall make a
14 reasonable attempt to discuss each violation and recommended
15 corrective action with the owner or administrator of the
16 facility, prior to written notification. The agency, instead
17 of fixing a period within which the facility shall enter into
18 compliance with standards, may request a plan of corrective
19 action from the facility which demonstrates a good faith
20 effort to remedy each violation by a specific date, subject to
21 the approval of the agency.

22 ~~(12) Administrative fines paid by any facility under~~
23 ~~this section shall be deposited into the Health Care Trust~~
24 ~~Fund and expended as provided in s. 429.18.~~

25 ~~(9)(13)~~ The agency shall develop and disseminate an
26 annual list of all facilities sanctioned or fined \$5,000 or
27 more for violations of state standards, the number and class
28 of violations involved, the penalties imposed, and the current
29 status of cases. The list shall be disseminated, at no charge,
30 to the Department of Elderly Affairs, the Department of
31 Health, the Department of Children and Family Services, the

1 Agency for Persons with Disabilities, the area agencies on
2 aging, the Florida Statewide Advocacy Council, and the state
3 and local ombudsman councils. The Department of Children and
4 Family Services shall disseminate the list to service
5 providers under contract to the department who are responsible
6 for referring persons to a facility for residency. The agency
7 may charge a fee commensurate with the cost of printing and
8 postage to other interested parties requesting a copy of this
9 list.

10 Section 151. Section 429.21, Florida Statutes, is
11 repealed.

12 Section 152. Subsection (9) of section 429.22, Florida
13 Statutes, is amended to read:

14 429.22 Receivership proceedings.--

15 (9) The court may direct the agency to allocate funds
16 from the Health Care Trust Fund to the receiver, subject to
17 the provisions of s. 429.18~~(1)~~.

18 Section 153. Subsection (9) of section 429.26, Florida
19 Statutes, is amended to read:

20 429.26 Appropriateness of placements; examinations of
21 residents.--

22 (9) If, at any time after admission to a facility, a
23 resident appears to need care beyond that which the facility
24 is licensed to provide, the agency shall require the resident
25 to be physically examined by a licensed physician, physician
26 assistant, or licensed nurse practitioner. This examination
27 shall, to the extent possible, be performed by the resident's
28 preferred physician or nurse practitioner and shall be paid
29 for by the resident with personal funds, except as provided in
30 s. 429.18~~(2)(1)(b)~~. Following this examination, the examining
31 physician, physician assistant, or licensed nurse practitioner

1 shall complete and sign a medical form provided by the agency.
2 The completed medical form shall be submitted to the agency
3 within 30 days after the date the facility owner or
4 administrator is notified by the agency that the physical
5 examination is required. After consultation with the
6 physician, physician assistant, or licensed nurse practitioner
7 who performed the examination, a medical review team
8 designated by the agency shall then determine whether the
9 resident is appropriately residing in the facility. The
10 medical review team shall base its decision on a comprehensive
11 review of the resident's physical and functional status,
12 including the resident's preferences, and not on an isolated
13 health-related problem. In the case of a mental health
14 resident, if the resident appears to have needs in addition to
15 those identified in the community living support plan, the
16 agency may require an evaluation by a mental health
17 professional, as determined by the Department of Children and
18 Family Services. A facility may not be required to retain a
19 resident who requires more services or care than the facility
20 is able to provide in accordance with its policies and
21 criteria for admission and continued residency. Members of the
22 medical review team making the final determination may not
23 include the agency personnel who initially questioned the
24 appropriateness of a resident's placement. Such determination
25 is final and binding upon the facility and the resident. Any
26 resident who is determined by the medical review team to be
27 inappropriately residing in a facility shall be given 30 days'
28 written notice to relocate by the owner or administrator,
29 unless the resident's continued residence in the facility
30 presents an imminent danger to the health, safety, or welfare
31 of the resident or a substantial probability exists that death

1 or serious physical harm would result to the resident if
2 allowed to remain in the facility.

3 Section 154. Subsections (1), (4), and (5) of section
4 429.31, Florida Statutes, are amended to read:

5 429.31 Closing of facility; notice; penalty.--

6 (1) In addition to the requirements of part II of
7 chapter 408, ~~Whenever a facility voluntarily discontinues~~
8 ~~operation, it shall inform the agency in writing at least 90~~
9 ~~days prior to the discontinuance of operation.~~ the facility
10 shall ~~also~~ inform each resident or the next of kin, legal
11 representative, or agency acting on each resident's behalf, of
12 the fact and the proposed time of ~~such~~ discontinuance of
13 operation, following the notification requirements provided in
14 s. 429.28(1)(k). In the event a resident has no person to
15 represent him or her, the facility shall be responsible for
16 referral to an appropriate social service agency for
17 placement.

18 ~~(4) Immediately upon discontinuance of the operation~~
19 ~~of a facility, the owner shall surrender the license therefor~~
20 ~~to the agency, and the license shall be canceled.~~

21 ~~(4)(5)~~ The agency may levy a fine in an amount no
22 greater than \$5,000 upon each person or business entity that
23 owns any interest in a facility that terminates operation
24 without providing notice to the agency and the residents of
25 the facility at least 30 days before operation ceases. This
26 fine shall not be levied against any facility involuntarily
27 closed at the initiation of the agency. The agency shall use
28 the proceeds of the fines to operate the facility until all
29 residents of the facility are relocated ~~and shall deposit any~~
30 ~~balance of the proceeds into the Health Care Trust Fund~~
31 ~~established pursuant to s. 429.18.~~

1 Section 155. Section 429.34, Florida Statutes, is
2 amended to read:

3 429.34 Right of entry and inspection.--In addition to
4 the requirements of s. 408.811, any duly designated officer or
5 employee of the department, the Department of Children and
6 Family Services, ~~the agency~~, the Medicaid Fraud Control Unit
7 of the Office of the Attorney General ~~Department of Legal~~
8 ~~Affairs~~, the state or local fire marshal, or a member of the
9 state or local long-term care ombudsman council shall have the
10 right to enter unannounced upon and into the premises of any
11 facility licensed pursuant to this part in order to determine
12 the state of compliance with the provisions of this part, part
13 II of chapter 408, and applicable ~~of rules or standards in~~
14 ~~force pursuant thereto. The right of entry and inspection~~
15 ~~shall also extend to any premises which the agency has reason~~
16 ~~to believe is being operated or maintained as a facility~~
17 ~~without a license; but no such entry or inspection of any~~
18 ~~premises may be made without the permission of the owner or~~
19 ~~person in charge thereof, unless a warrant is first obtained~~
20 ~~from the circuit court authorizing such entry. The warrant~~
21 ~~requirement shall extend only to a facility which the agency~~
22 ~~has reason to believe is being operated or maintained as a~~
23 ~~facility without a license. Any application for a license or~~
24 ~~renewal thereof made pursuant to this part shall constitute~~
25 ~~permission for, and complete acquiescence in, any entry or~~
26 ~~inspection of the premises for which the license is sought, in~~
27 ~~order to facilitate verification of the information submitted~~
28 ~~on or in connection with the application; to discover,~~
29 ~~investigate, and determine the existence of abuse or neglect;~~
30 ~~or to elicit, receive, respond to, and resolve complaints. Any~~
31 ~~current valid license shall constitute unconditional~~

1 ~~permission for, and complete acquiescence in, any entry or~~
2 ~~inspection of the premises by authorized personnel. The agency~~
3 ~~shall retain the right of entry and inspection of facilities~~
4 ~~that have had a license revoked or suspended within the~~
5 ~~previous 24 months, to ensure that the facility is not~~
6 ~~operating unlawfully. However, before entering the facility, a~~
7 ~~statement of probable cause must be filed with the director of~~
8 ~~the agency, who must approve or disapprove the action within~~
9 ~~48 hours. Probable cause shall include, but is not limited to,~~
10 ~~evidence that the facility holds itself out to the public as a~~
11 ~~provider of personal care services or the receipt of a~~
12 ~~complaint by the long term care ombudsman council about the~~
13 ~~facility.~~ Data collected by the state or local long-term care
14 ombudsman councils or the state or local advocacy councils may
15 be used by the agency in investigations involving violations
16 of regulatory standards.

17 Section 156. Section 429.35, Florida Statutes, is
18 amended to read:

19 429.35 Maintenance of records; reports.--

20 (1) Every facility shall maintain, as public
21 information available for public inspection under such
22 conditions as the agency shall prescribe, records containing
23 copies of all inspection reports pertaining to the facility
24 that have been issued by the agency to the facility. Copies of
25 inspection reports shall be retained in the records for 5
26 years from the date the reports are filed or issued.

27 (2) Within 60 days after the date of the biennial
28 inspection visit required under s. 408.811 or within 30 days
29 after the date of any interim visit, the agency shall forward
30 the results of the inspection to the local ombudsman council
31 in whose planning and service area, as defined in part I ~~II~~ of

1 chapter 400, the facility is located; to at least one public
2 library or, in the absence of a public library, the county
3 seat in the county in which the inspected assisted living
4 facility is located; and, when appropriate, to the district
5 Adult Services and Mental Health Program Offices.

6 (3) Every facility shall post a copy of the last
7 inspection report of the agency for that facility in a
8 prominent location within the facility so as to be accessible
9 to all residents and to the public. Upon request, the
10 facility shall also provide a copy of the report to any
11 resident of the facility or to an applicant for admission to
12 the facility.

13 Section 157. Section 429.41, Florida Statutes, is
14 amended to read:

15 429.41 Rules establishing standards.--

16 (1) It is the intent of the Legislature that rules
17 published and enforced pursuant to this section shall include
18 criteria by which a reasonable and consistent quality of
19 resident care and quality of life may be ensured and the
20 results of such resident care may be demonstrated. Such rules
21 shall also ensure a safe and sanitary environment that is
22 residential and noninstitutional in design or nature. It is
23 further intended that reasonable efforts be made to
24 accommodate the needs and preferences of residents to enhance
25 the quality of life in a facility. The agency, in consultation
26 with the department, may adopt rules to administer the
27 requirements of part II of chapter 408. In order to provide
28 safe and sanitary facilities and the highest quality of
29 resident care accommodating the needs and preferences of
30 residents, the department, in consultation with the agency,
31 the Department of Children and Family Services, and the

1 Department of Health, shall adopt rules, policies, and
2 procedures to administer this part, which must include
3 reasonable and fair minimum standards in relation to:
4 (a) The requirements for and maintenance of
5 facilities, not in conflict with the provisions of chapter
6 553, relating to plumbing, heating, cooling, lighting,
7 ventilation, living space, and other housing conditions, which
8 will ensure the health, safety, and comfort of residents and
9 protection from fire hazard, including adequate provisions for
10 fire alarm and other fire protection suitable to the size of
11 the structure. Uniform firesafety standards shall be
12 established and enforced by the State Fire Marshal in
13 cooperation with the agency, the department, and the
14 Department of Health.

15 1. Evacuation capability determination.--

16 a. The provisions of the National Fire Protection
17 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
18 for determining the ability of the residents, with or without
19 staff assistance, to relocate from or within a licensed
20 facility to a point of safety as provided in the fire codes
21 adopted herein. An evacuation capability evaluation for
22 initial licensure shall be conducted within 6 months after the
23 date of licensure. For existing licensed facilities that are
24 not equipped with an automatic fire sprinkler system, the
25 administrator shall evaluate the evacuation capability of
26 residents at least annually. The evacuation capability
27 evaluation for each facility not equipped with an automatic
28 fire sprinkler system shall be validated, without liability,
29 by the State Fire Marshal, by the local fire marshal, or by
30 the local authority having jurisdiction over firesafety,
31 before the license renewal date. If the State Fire Marshal,

1 | local fire marshal, or local authority having jurisdiction
2 | over firesafety has reason to believe that the evacuation
3 | capability of a facility as reported by the administrator may
4 | have changed, it may, with assistance from the facility
5 | administrator, reevaluate the evacuation capability through
6 | timed exiting drills. Translation of timed fire exiting drills
7 | to evacuation capability may be determined:

8 | (I) Three minutes or less: prompt.

9 | (II) More than 3 minutes, but not more than 13
10 | minutes: slow.

11 | (III) More than 13 minutes: impractical.

12 | b. The Office of the State Fire Marshal shall provide
13 | or cause the provision of training and education on the proper
14 | application of Chapter 5, NFPA 101A, 1995 edition, to its
15 | employees, to staff of the Agency for Health Care
16 | Administration who are responsible for regulating facilities
17 | under this part, and to local governmental inspectors. The
18 | Office of the State Fire Marshal shall provide or cause the
19 | provision of this training within its existing budget, but may
20 | charge a fee for this training to offset its costs. The
21 | initial training must be delivered within 6 months after July
22 | 1, 1995, and as needed thereafter.

23 | c. The Office of the State Fire Marshal, in
24 | cooperation with provider associations, shall provide or cause
25 | the provision of a training program designed to inform
26 | facility operators on how to properly review bid documents
27 | relating to the installation of automatic fire sprinklers. The
28 | Office of the State Fire Marshal shall provide or cause the
29 | provision of this training within its existing budget, but may
30 | charge a fee for this training to offset its costs. The

31 |

1 initial training must be delivered within 6 months after July
2 1, 1995, and as needed thereafter.

3 d. The administrator of a licensed facility shall sign
4 an affidavit verifying the number of residents occupying the
5 facility at the time of the evacuation capability evaluation.

6 2. Firesafety requirements.--

7 a. Except for the special applications provided
8 herein, effective January 1, 1996, the provisions of the
9 National Fire Protection Association, Life Safety Code, NFPA
10 101, 1994 edition, Chapter 22 for new facilities and Chapter
11 23 for existing facilities shall be the uniform fire code
12 applied by the State Fire Marshal for assisted living
13 facilities, pursuant to s. 633.022.

14 b. Any new facility, regardless of size, that applies
15 for a license on or after January 1, 1996, must be equipped
16 with an automatic fire sprinkler system. The exceptions as
17 provided in s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted
18 herein, apply to any new facility housing eight or fewer
19 residents. On July 1, 1995, local governmental entities
20 responsible for the issuance of permits for construction shall
21 inform, without liability, any facility whose permit for
22 construction is obtained prior to January 1, 1996, of this
23 automatic fire sprinkler requirement. As used in this part,
24 the term "a new facility" does not mean an existing facility
25 that has undergone change of ownership.

26 c. Notwithstanding any provision of s. 633.022 or of
27 the National Fire Protection Association, NFPA 101A, Chapter
28 5, 1995 edition, to the contrary, any existing facility
29 housing eight or fewer residents is not required to install an
30 automatic fire sprinkler system, nor to comply with any other
31 requirement in Chapter 23, NFPA 101, 1994 edition, that

1 exceeds the firesafety requirements of NFPA 101, 1988 edition,
2 that applies to this size facility, unless the facility has
3 been classified as impractical to evacuate. Any existing
4 facility housing eight or fewer residents that is classified
5 as impractical to evacuate must install an automatic fire
6 sprinkler system within the timeframes granted in this
7 section.

8 d. Any existing facility that is required to install
9 an automatic fire sprinkler system under this paragraph need
10 not meet other firesafety requirements of Chapter 23, NFPA
11 101, 1994 edition, which exceed the provisions of NFPA 101,
12 1988 edition. The mandate contained in this paragraph which
13 requires certain facilities to install an automatic fire
14 sprinkler system supersedes any other requirement.

15 e. This paragraph does not supersede the exceptions
16 granted in NFPA 101, 1988 edition or 1994 edition.

17 f. This paragraph does not exempt facilities from
18 other firesafety provisions adopted under s. 633.022 and local
19 building code requirements in effect before July 1, 1995.

20 g. A local government may charge fees only in an
21 amount not to exceed the actual expenses incurred by local
22 government relating to the installation and maintenance of an
23 automatic fire sprinkler system in an existing and properly
24 licensed assisted living facility structure as of January 1,
25 1996.

26 h. If a licensed facility undergoes major
27 reconstruction or addition to an existing building on or after
28 January 1, 1996, the entire building must be equipped with an
29 automatic fire sprinkler system. Major reconstruction of a
30 building means repair or restoration that costs in excess of
31 50 percent of the value of the building as reported on the tax

1 rolls, excluding land, before reconstruction. Multiple
2 reconstruction projects within a 5-year period the total costs
3 of which exceed 50 percent of the initial value of the
4 building at the time the first reconstruction project was
5 permitted are to be considered as major reconstruction.
6 Application for a permit for an automatic fire sprinkler
7 system is required upon application for a permit for a
8 reconstruction project that creates costs that go over the
9 50-percent threshold.

10 i. Any facility licensed before January 1, 1996, that
11 is required to install an automatic fire sprinkler system
12 shall ensure that the installation is completed within the
13 following timeframes based upon evacuation capability of the
14 facility as determined under subparagraph 1.:

15 (I) Impractical evacuation capability, 24 months.

16 (II) Slow evacuation capability, 48 months.

17 (III) Prompt evacuation capability, 60 months.

18

19 The beginning date from which the deadline for the automatic
20 fire sprinkler installation requirement must be calculated is
21 upon receipt of written notice from the local fire official
22 that an automatic fire sprinkler system must be installed. The
23 local fire official shall send a copy of the document
24 indicating the requirement of a fire sprinkler system to the
25 Agency for Health Care Administration.

26 j. It is recognized that the installation of an
27 automatic fire sprinkler system may create financial hardship
28 for some facilities. The appropriate local fire official
29 shall, without liability, grant two 1-year extensions to the
30 timeframes for installation established herein, if an
31 automatic fire sprinkler installation cost estimate and proof

1 of denial from two financial institutions for a construction
2 loan to install the automatic fire sprinkler system are
3 submitted. However, for any facility with a class I or class
4 II, or a history of uncorrected class III, firesafety
5 deficiencies, an extension must not be granted. The local fire
6 official shall send a copy of the document granting the time
7 extension to the Agency for Health Care Administration.

8 k. A facility owner whose facility is required to be
9 equipped with an automatic fire sprinkler system under Chapter
10 23, NFPA 101, 1994 edition, as adopted herein, must disclose
11 to any potential buyer of the facility that an installation of
12 an automatic fire sprinkler requirement exists. The sale of
13 the facility does not alter the timeframe for the installation
14 of the automatic fire sprinkler system.

15 l. Existing facilities required to install an
16 automatic fire sprinkler system as a result of
17 construction-type restrictions in Chapter 23, NFPA 101, 1994
18 edition, as adopted herein, or evacuation capability
19 requirements shall be notified by the local fire official in
20 writing of the automatic fire sprinkler requirement, as well
21 as the appropriate date for final compliance as provided in
22 this subparagraph. The local fire official shall send a copy
23 of the document to the Agency for Health Care Administration.

24 m. Except in cases of life-threatening fire hazards,
25 if an existing facility experiences a change in the evacuation
26 capability, or if the local authority having jurisdiction
27 identifies a construction-type restriction, such that an
28 automatic fire sprinkler system is required, it shall be
29 afforded time for installation as provided in this
30 subparagraph.

31

1 Facilities that are fully sprinkled and in compliance with
2 other firesafety standards are not required to conduct more
3 than one of the required fire drills between the hours of 11
4 p.m. and 7 a.m., per year. In lieu of the remaining drills,
5 staff responsible for residents during such hours may be
6 required to participate in a mock drill that includes a review
7 of evacuation procedures. Such standards must be included or
8 referenced in the rules adopted by the State Fire Marshal.
9 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
10 final administrative authority for firesafety standards
11 established and enforced pursuant to this section. All
12 licensed facilities must have an annual fire inspection
13 conducted by the local fire marshal or authority having
14 jurisdiction.

15 3. Resident elopement requirements.--Facilities are
16 required to conduct a minimum of two resident elopement
17 prevention and response drills per year. All administrators
18 and direct care staff must participate in the drills which
19 shall include a review of procedures to address resident
20 elopement. Facilities must document the implementation of the
21 drills and ensure that the drills are conducted in a manner
22 consistent with the facility's resident elopement policies and
23 procedures.

24 (b) The preparation and annual update of a
25 comprehensive emergency management plan. Such standards must
26 be included in the rules adopted by the department after
27 consultation with the Department of Community Affairs. At a
28 minimum, the rules must provide for plan components that
29 address emergency evacuation transportation; adequate
30 sheltering arrangements; postdisaster activities, including
31 provision of emergency power, food, and water; postdisaster

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

16 (c) The number, training, and qualifications of all
17 personnel having responsibility for the care of residents. The
18 rules must require adequate staff to provide for the safety of
19 all residents. Facilities licensed for 17 or more residents
20 are required to maintain an alert staff for 24 hours per day.

21 (d) All sanitary conditions within the facility and
22 its surroundings which will ensure the health and comfort of
23 residents. The rules must clearly delineate the
24 responsibilities of the agency's licensure and survey staff,
25 the county health departments, and the local authority having
26 jurisdiction over firesafety and ensure that inspections are
27 not duplicative. The agency may collect fees for food service
28 inspections conducted by the county health departments and
29 transfer such fees to the Department of Health.

30 (e) License application and license renewal, transfer
31 of ownership, proper management of resident funds and personal

1 | property, surety bonds, resident contracts, refund policies,
2 | financial ability to operate, and facility and staff records.

3 | (f) Inspections, complaint investigations,
4 | moratoriums, classification of deficiencies, levying and
5 | enforcement of penalties, and use of income from fees and
6 | fines.

7 | (g) The enforcement of the resident bill of rights
8 | specified in s. 429.28.

9 | (h) The care and maintenance of residents, which must
10 | include, but is not limited to:

- 11 | 1. The supervision of residents;
- 12 | 2. The provision of personal services;
- 13 | 3. The provision of, or arrangement for, social and
14 | leisure activities;
- 15 | 4. The arrangement for appointments and transportation
16 | to appropriate medical, dental, nursing, or mental health
17 | services, as needed by residents;
- 18 | 5. The management of medication;
- 19 | 6. The nutritional needs of residents;
- 20 | 7. Resident records; and
- 21 | 8. Internal risk management and quality assurance.

22 | (i) Facilities holding a limited nursing, extended
23 | congregate care, or limited mental health license.

24 | (j) The establishment of specific criteria to define
25 | appropriateness of resident admission and continued residency
26 | in a facility holding a standard, limited nursing, extended
27 | congregate care, and limited mental health license.

28 | (k) The use of physical or chemical restraints. The
29 | use of physical restraints is limited to half-bed rails as
30 | prescribed and documented by the resident's physician with the
31 | consent of the resident or, if applicable, the resident's

1 representative or designee or the resident's surrogate,
2 guardian, or attorney in fact. The use of chemical restraints
3 is limited to prescribed dosages of medications authorized by
4 the resident's physician and must be consistent with the
5 resident's diagnosis. Residents who are receiving medications
6 that can serve as chemical restraints must be evaluated by
7 their physician at least annually to assess:

8 1. The continued need for the medication.
9 2. The level of the medication in the resident's
10 blood.

11 3. The need for adjustments in the prescription.

12 (1) The establishment of specific policies and
13 procedures on resident elopement. Facilities shall conduct a
14 minimum of two resident elopement drills each year. All
15 administrators and direct care staff shall participate in the
16 drills. Facilities shall document the drills.

17 (2) In adopting any rules pursuant to this part, the
18 department, in conjunction with the agency, shall make
19 distinct standards for facilities based upon facility size;
20 the types of care provided; the physical and mental
21 capabilities and needs of residents; the type, frequency, and
22 amount of services and care offered; and the staffing
23 characteristics of the facility. Rules developed pursuant to
24 this section shall not restrict the use of shared staffing and
25 shared programming in facilities that are part of retirement
26 communities that provide multiple levels of care and otherwise
27 meet the requirements of law and rule. Except for uniform
28 firesafety standards, the department shall adopt by rule
29 separate and distinct standards for facilities with 16 or
30 fewer beds and for facilities with 17 or more beds. The
31 standards for facilities with 16 or fewer beds shall be

1 appropriate for a noninstitutional residential environment,
2 provided that the structure is no more than two stories in
3 height and all persons who cannot exit the facility unassisted
4 in an emergency reside on the first floor. The department, in
5 conjunction with the agency, may make other distinctions among
6 types of facilities as necessary to enforce the provisions of
7 this part. Where appropriate, the agency shall offer alternate
8 solutions for complying with established standards, based on
9 distinctions made by the department and the agency relative to
10 the physical characteristics of facilities and the types of
11 care offered therein.

12 (3) The department shall submit a copy of proposed
13 rules to the Speaker of the House of Representatives, the
14 President of the Senate, and appropriate committees of
15 substance for review and comment prior to the promulgation
16 thereof.

17 ~~(a)~~ Rules promulgated by the department shall
18 encourage the development of homelike facilities which promote
19 the dignity, individuality, personal strengths, and
20 decisionmaking ability of residents.

21 (4)~~(b)~~ The agency, in consultation with the
22 department, may waive rules promulgated pursuant to this part
23 in order to demonstrate and evaluate innovative or
24 cost-effective congregate care alternatives which enable
25 individuals to age in place. Such waivers may be granted only
26 in instances where there is reasonable assurance that the
27 health, safety, or welfare of residents will not be
28 endangered. To apply for a waiver, the licensee shall submit
29 to the agency a written description of the concept to be
30 demonstrated, including goals, objectives, and anticipated
31 benefits; the number and types of residents who will be

1 affected, if applicable; a brief description of how the
2 demonstration will be evaluated; and any other information
3 deemed appropriate by the agency. Any facility granted a
4 waiver shall submit a report of findings to the agency and the
5 department within 12 months. At such time, the agency may
6 renew or revoke the waiver or pursue any regulatory or
7 statutory changes necessary to allow other facilities to adopt
8 the same practices. The department may by rule clarify terms
9 and establish waiver application procedures, criteria for
10 reviewing waiver proposals, and procedures for reporting
11 findings, as necessary to implement this subsection.

12 (5)~~(4)~~ The agency may use an abbreviated biennial
13 standard licensure inspection that consists of a review of key
14 quality-of-care standards in lieu of a full inspection in
15 facilities which have a good record of past performance.
16 However, a full inspection shall be conducted in facilities
17 which have had a history of class I or class II violations,
18 uncorrected class III violations, confirmed ombudsman council
19 complaints, or confirmed licensure complaints, within the
20 previous licensure period immediately preceding the inspection
21 or when a potentially serious problem is identified during the
22 abbreviated inspection. The agency, in consultation with the
23 department, shall develop the key quality-of-care standards
24 with input from the State Long-Term Care Ombudsman Council and
25 representatives of provider groups for incorporation into its
26 rules. The department, in consultation with the agency, shall
27 report annually to the Legislature concerning its
28 implementation of this subsection. The report shall include,
29 at a minimum, the key quality-of-care standards which have
30 been developed; the number of facilities identified as being
31 eligible for the abbreviated inspection; the number of

1 facilities which have received the abbreviated inspection and,
2 of those, the number that were converted to full inspection;
3 the number and type of subsequent complaints received by the
4 agency or department on facilities which have had abbreviated
5 inspections; any recommendations for modification to this
6 subsection; any plans by the agency to modify its
7 implementation of this subsection; and any other information
8 which the department believes should be reported.

9 ~~(5) A fee shall be charged by the department to any~~
10 ~~person requesting a copy of this part or rules promulgated~~
11 ~~under this part. Such fees shall not exceed the actual cost of~~
12 ~~duplication and postage.~~

13 Section 158. Subsections (4) through (7) of section
14 429.47, Florida Statutes, are renumbered as subsections (1)
15 through (4), respectively, and present subsections (1), (2),
16 and (3) of that section are amended to read:

17 429.47 Prohibited acts; penalties for violation.--

18 ~~(1) It is unlawful for any person or public body to~~
19 ~~offer or advertise to the public, in any way by any medium~~
20 ~~whatever, personal services as defined in this act, without~~
21 ~~obtaining a valid current license. It is unlawful for any~~
22 ~~holder of a license issued pursuant to the provisions of this~~
23 ~~act to advertise or hold out to the public that it holds a~~
24 ~~license for a facility other than that for which it actually~~
25 ~~holds a license.~~

26 ~~(2) It is unlawful for any holder of a license issued~~
27 ~~pursuant to the provisions of this act to withhold from the~~
28 ~~agency any evidence of financial instability, including, but~~
29 ~~not limited to, bad checks, delinquent accounts, nonpayment of~~
30 ~~withholding taxes, unpaid utility expenses, nonpayment for~~
31 ~~essential services, or adverse court action concerning the~~

1 ~~financial viability of the facility or any other facility~~
2 ~~licensed under part II of chapter 400 or under this part which~~
3 ~~is owned by the licensee.~~

4 ~~(3) Any person found guilty of violating subsection~~
5 ~~(1) or subsection (2) commits a misdemeanor of the second~~
6 ~~degree, punishable as provided in s. 775.083. Each day of~~
7 ~~continuing violation shall be considered a separate offense.~~

8 Section 159. Section 429.51, Florida Statutes, is
9 repealed.

10 Section 160. Section 429.67, Florida Statutes, is
11 amended to read:

12 429.67 Licensure ~~application and renewal.~~--

13 (1) The requirements of part II of chapter 408 apply
14 to the provision of services that require licensure pursuant
15 to this part and part II of chapter 408 and to entities
16 licensed by or applying for such licensure from the Agency for
17 Health Care Administration pursuant to this part. A license
18 issued by the agency is required in order to operate an adult
19 family-care home in this state. ~~Each person who intends to be~~
20 ~~an adult family care home provider must apply for a license~~
21 ~~from the agency at least 90 days before the applicant intends~~
22 ~~to operate the adult family care home.~~

23 (2) A person who intends to be an adult family-care
24 home provider must own or rent the adult family-care home that
25 is to be licensed and reside therein.

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. The amount of the fee shall be \$200 per
30 biennium. ~~The agency shall notify a licensee at least 120 days~~
31 ~~before the expiration date that license renewal is required to~~

1 ~~continue operation. The notification must be provided~~
2 ~~electronically or by mail delivery. Application for a license~~
3 ~~or annual license renewal must be made on a form provided by~~
4 ~~the agency, signed under oath, and must be accompanied by a~~
5 ~~licensing fee of \$100 per year.~~

6 (4) Upon receipt of a completed license application or
7 license renewal, and the fee, the agency shall initiate a
8 level 1 background screening as provided under chapter 435 on
9 the adult family-care home provider, the designated relief
10 person, all adult household members, and all staff members.

11 ~~The agency shall conduct an onsite visit to the home that is~~
12 ~~to be licensed.~~

13 (a) Proof of compliance with level 1 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. Such proof must be
18 accompanied, under penalty of perjury, by a copy of the
19 person's current professional license and an affidavit of
20 current compliance with the background screening requirements.

21 (b) The person required to be screened must have been
22 continuously employed in the same type of occupation for which
23 the person is seeking employment without a breach in service
24 that exceeds 180 days, and proof of compliance with the level
25 1 screening requirement which is no more than 2 years old must
26 be provided. Proof of compliance shall be provided directly
27 from one employer or contractor to another, and not from the
28 person screened. Upon request, a copy of screening results
29 shall be provided to the person screened by the employer
30 retaining documentation of the screening.

31

1 ~~(5) The application must be accompanied by a~~
2 ~~description and explanation of any exclusions, permanent~~
3 ~~suspensions, or terminations of the applicant from~~
4 ~~participation in the Medicaid or Medicare programs or any~~
5 ~~other governmental health care or health insurance program.~~

6 (5)(6) Unless the adult family-care home is a
7 community residential home subject to chapter 419, the
8 applicant must provide documentation, signed by the
9 appropriate governmental official, that the home has met local
10 zoning requirements for the location for which the license is
11 sought.

12 (6)(7) In addition to the requirements of s. 408.811,
13 access to a licensed adult family-care home must be provided
14 at reasonable times for the appropriate officials of the
15 department, the Department of Health, the Department of
16 Children and Family Services, the agency, and the State Fire
17 Marshal, who are responsible for the development and
18 maintenance of fire, health, sanitary, and safety standards,
19 to inspect the facility to assure compliance with these
20 standards. In addition, access to a licensed adult family-care
21 home must be provided at reasonable times for the local
22 long-term care ombudsman council.

23 ~~(8) A license is effective for 1 year after the date~~
24 ~~of issuance unless revoked sooner. Each license must state the~~
25 ~~name of the provider, the address of the home to which the~~
26 ~~license applies, and the maximum number of residents of the~~
27 ~~home. Failure to timely file a license renewal application~~
28 ~~shall result in a late fee equal to 50 percent of the license~~
29 ~~fee.~~

30
31

1 ~~(9) A license is not transferable or applicable to any~~
2 ~~location or person other than the location and person~~
3 ~~indicated on the license.~~

4 (7)(10) The licensed maximum capacity of each adult
5 family-care home is based on the service needs of the
6 residents and the capability of the provider to meet the needs
7 of the residents. Any relative who lives in the adult
8 family-care home and who is a disabled adult or frail elder
9 must be included in that limitation.

10 (8)(11) Each adult family-care home must designate at
11 least one licensed space for a resident receiving optional
12 state supplementation. The Department of Children and Family
13 Services shall specify by rule the procedures to be followed
14 for referring residents who receive optional state
15 supplementation to adult family-care homes. Those homes
16 licensed as adult foster homes or assisted living facilities
17 prior to January 1, 1994, that convert to adult family-care
18 homes, are exempt from this requirement.

19 (9)(12) In addition to the license categories
20 available in s. 408.808, the agency may issue a conditional
21 license to a provider for the purpose of bringing the adult
22 family-care home into compliance with licensure requirements.
23 A conditional license must be limited to a specific period,
24 not exceeding 6 months. The department shall, by rule,
25 establish criteria for issuing conditional licenses.

26 ~~(13) All moneys collected under this section must be~~
27 ~~deposited into the Department of Elderly Affairs~~
28 ~~Administrative Trust Fund.~~

29 (10)(14) The department may adopt rules to establish
30 procedures, identify forms, specify documentation, and clarify
31 terms, as necessary, to administer this section.

1 (11) The agency may adopt rules to administer the
2 requirements of part II of chapter 408.

3 Section 161. Section 429.69, Florida Statutes, is
4 amended to read:

5 429.69 Denial, revocation, and ~~or~~ suspension of a
6 license.--In addition to the requirements of part II of
7 chapter 408, the agency may deny, suspend, and ~~or~~ revoke a
8 license for any of the following reasons:

9 (1) Failure of any of the persons required to undergo
10 background screening under s. 429.67 to meet the level 1
11 screening standards of s. 435.03, unless an exemption from
12 disqualification has been provided by the agency.

13 ~~(2) An intentional or negligent act materially~~
14 ~~affecting the health, safety, or welfare of the adult~~
15 ~~family care home residents.~~

16 ~~(3) Submission of fraudulent information or omission~~
17 ~~of any material fact on a license application or any other~~
18 ~~document required by the agency.~~

19 ~~(4) Failure to pay an administrative fine assessed~~
20 ~~under this part.~~

21 ~~(5) A violation of this part or adopted rules which~~
22 ~~results in conditions or practices that directly threaten the~~
23 ~~physical or emotional health, safety, or welfare of residents.~~

24 (2)(6) Failure to correct cited fire code violations
25 that threaten the health, safety, or welfare of residents.

26 ~~(7) Failure to submit a completed initial license~~
27 ~~application or to complete an application for license renewal~~
28 ~~within the specified timeframes.~~

29 ~~(8) Exclusion, permanent suspension, or termination of~~
30 ~~the provider from the Medicare or Medicaid program.~~

31

1 Section 162. Section 429.71, Florida Statutes, is
2 amended to read:

3 429.71 Classification of deficiencies; administrative
4 fines ~~Violations; penalties.~~--

5 (1) In addition to the requirements of part II of
6 chapter 408 and in addition to any other liability or penalty
7 provided by law, the agency may impose an administrative fine
8 ~~a civil penalty~~ on a provider according to the following
9 classification:

10 (a) Class I violations are those conditions or
11 practices related to the operation and maintenance of an adult
12 family-care home or to the care of residents which the agency
13 determines present an imminent danger to the residents or
14 guests of the facility or a substantial probability that death
15 or serious physical or emotional harm would result therefrom.
16 The condition or practice that constitutes a class I violation
17 must be abated or eliminated within 24 hours, unless a fixed
18 period, as determined by the agency, is required for
19 correction. A class I deficiency is subject to an
20 administrative fine in an amount not less than \$500 and not
21 exceeding \$1,000 for each violation. A fine may be levied
22 notwithstanding the correction of the deficiency.

23 (b) Class II violations are those conditions or
24 practices related to the operation and maintenance of an adult
25 family-care home or to the care of residents which the agency
26 determines directly threaten the physical or emotional health,
27 safety, or security of the residents, other than class I
28 violations. A class II violation is subject to an
29 administrative fine in an amount not less than \$250 and not
30 exceeding \$500 for each violation. A citation for a class II
31 violation must specify the time within which the violation is

1 required to be corrected. If a class II violation is corrected
2 within the time specified, no civil penalty shall be imposed,
3 unless it is a repeated offense.

4 (c) Class III violations are those conditions or
5 practices related to the operation and maintenance of an adult
6 family-care home or to the care of residents which the agency
7 determines indirectly or potentially threaten the physical or
8 emotional health, safety, or security of residents, other than
9 class I or class II violations. A class III violation is
10 subject to an administrative fine in an amount not less than
11 \$100 and not exceeding \$250 for each violation. A citation for
12 a class III violation shall specify the time within which the
13 violation is required to be corrected. If a class III
14 violation is corrected within the time specified, no civil
15 penalty shall be imposed, unless it is a repeated offense.

16 (d) Class IV violations are those conditions or
17 occurrences related to the operation and maintenance of an
18 adult family-care home, or related to the required reports,
19 forms, or documents, which do not have the potential of
20 negatively affecting the residents. A provider that does not
21 correct a class IV violation within the time limit specified
22 by the agency is subject to an administrative fine in an
23 amount not less than \$50 and not exceeding \$100 for each
24 violation. Any class IV violation that is corrected during the
25 time the agency survey is conducted will be identified as an
26 agency finding and not as a violation.

27 (2) The agency may impose an administrative fine for
28 violations which do not qualify as class I, class II, class
29 III, or class IV violations. The amount of the fine shall not
30 exceed \$250 for each violation or \$2,000 in the aggregate.

31 Unclassified violations may include:

- 1 (a) Violating any term or condition of a license.
- 2 (b) Violating any provision of rule adopted under this
3 part, part II of chapter 408, or applicable rules.
- 4 (c) Failure to follow the criteria and procedures
5 provided under part I of chapter 394 relating to the
6 transportation, voluntary admission, and involuntary
7 examination of adult family-care home residents.
- 8 (d) Exceeding licensed capacity.
- 9 (e) Providing services beyond the scope of the
10 license.
- 11 (f) Violating a moratorium.
- 12 (3) Each day during which a violation occurs
13 constitutes a separate offense.
- 14 (4) In determining whether a penalty is to be imposed,
15 and in fixing the amount of any penalty to be imposed, the
16 agency must consider:
- 17 (a) The gravity of the violation.
- 18 (b) Actions taken by the provider to correct a
19 violation.
- 20 (c) Any previous violation by the provider.
- 21 (d) The financial benefit to the provider of
22 committing or continuing the violation.
- 23 (5) As an alternative to or in conjunction with an
24 administrative action against a provider, the agency may
25 request a plan of corrective action that demonstrates a good
26 faith effort to remedy each violation by a specific date,
27 subject to the approval of the agency.
- 28 (6) The department shall set forth, by rule, notice
29 requirements and procedures for correction of deficiencies.
- 30 ~~(7) Civil penalties paid by a provider must be~~
31 ~~deposited into the Department of Elderly Affairs~~

1 ~~Administrative Trust Fund and used to offset the expenses of~~
2 ~~departmental training and education for adult family care home~~
3 ~~providers.~~

4 ~~(8) The agency may impose an immediate moratorium on~~
5 ~~admissions to any adult family care home if the agency finds~~
6 ~~that a condition in the home presents a threat to the health,~~
7 ~~safety, or welfare of its residents. The department may by~~
8 ~~rule establish facility conditions that constitute grounds for~~
9 ~~imposing a moratorium and establish procedures for imposing~~
10 ~~and lifting a moratorium.~~

11 Section 163. Section 429.73, Florida Statutes, is
12 amended to read:

13 429.73 Rules and standards relating to adult
14 family-care homes.--

15 (1) The agency, in consultation with the department,
16 may adopt rules to administer the requirements of part II of
17 chapter 408. The department, in consultation with the
18 Department of Health, the Department of Children and Family
19 Services, and the agency shall, by rule, establish minimum
20 standards to ensure the health, safety, and well-being of each
21 resident in the adult family-care home pursuant to this part.

22 The rules must address:

23 (a) Requirements for the physical site of the facility
24 and facility maintenance.

25 (b) Services that must be provided to all residents of
26 an adult family-care home and standards for such services,
27 which must include, but need not be limited to:

28 1. Room and board.

29 2. Assistance necessary to perform the activities of
30 daily living.

31 3. Assistance necessary to administer medication.

- 1 4. Supervision of residents.
- 2 5. Health monitoring.
- 3 6. Social and leisure activities.
- 4 (c) Standards and procedures for license application
- 5 and annual license renewal, advertising, proper management of
- 6 each resident's funds and personal property and personal
- 7 affairs, financial ability to operate, medication management,
- 8 inspections, complaint investigations, and facility, staff,
- 9 and resident records.
- 10 (d) Qualifications, training, standards, and
- 11 responsibilities for providers and staff.
- 12 (e) Compliance with chapter 419, relating to community
- 13 residential homes.
- 14 (f) Criteria and procedures for determining the
- 15 appropriateness of a resident's placement and continued
- 16 residency in an adult family-care home. A resident who
- 17 requires 24-hour nursing supervision may not be retained in an
- 18 adult family-care home unless such resident is an enrolled
- 19 hospice patient and the resident's continued residency is
- 20 mutually agreeable to the resident and the provider.
- 21 (g) Procedures for providing notice and assuring the
- 22 least possible disruption of residents' lives when residents
- 23 are relocated, an adult family-care home is closed, or the
- 24 ownership of an adult family-care home is transferred.
- 25 (h) Procedures to protect the residents' rights as
- 26 provided in s. 429.85.
- 27 (i) Procedures to promote the growth of adult
- 28 family-care homes as a component of a long-term care system.
- 29 (j) Procedures to promote the goal of aging in place
- 30 for residents of adult family-care homes.
- 31

1 (2) The department shall by rule provide minimum
2 standards and procedures for emergencies. Pursuant to s.
3 633.022, the State Fire Marshal, in consultation with the
4 department and the agency, shall adopt uniform firesafety
5 standards for adult family-care homes.

6 (3) The department shall adopt rules providing for the
7 implementation of orders not to resuscitate. The provider may
8 withhold or withdraw cardiopulmonary resuscitation if
9 presented with an order not to resuscitate executed pursuant
10 to s. 401.45. The provider shall not be subject to criminal
11 prosecution or civil liability, nor be considered to have
12 engaged in negligent or unprofessional conduct, for
13 withholding or withdrawing cardiopulmonary resuscitation
14 pursuant to such an order and applicable rules ~~adopted by the~~
15 ~~department.~~

16 ~~(4) The provider of any adult family care home that is~~
17 ~~in operation at the time any rules are adopted or amended~~
18 ~~under this part may be given a reasonable time, not exceeding~~
19 ~~6 months, within which to comply with the new or revised rules~~
20 ~~and standards.~~

21 Section 164. Section 429.77, Florida Statutes, is
22 repealed.

23 Section 165. Subsections (6) and (7) of section
24 429.901, Florida Statutes, are amended to read:

25 429.901 Definitions.--As used in this part, the term:

26 (6) "Operator" means the licensee or person having
27 general administrative charge of an adult day care center.

28 (7) "Owner" means the licensee ~~owner~~ of an adult day
29 care center.

30 Section 166. Section 429.907, Florida Statutes, is
31 amended to read:

1 429.907 License requirement; fee; exemption;

2 display.--

3 (1) The requirements of part II of chapter 408 apply
4 to the provision of services that require licensure pursuant
5 to this part and part II of chapter 408 and to entities
6 licensed by or applying for such licensure from the Agency for
7 Health Care Administration pursuant to this part. A license
8 issued by the agency is required in order to operate an adult
9 day care in this state. It is unlawful to operate an adult day
10 care center without first obtaining from the agency a license
11 authorizing such operation. The agency is responsible for
12 licensing adult day care centers in accordance with this part.

13 (2) Separate licenses are required for centers
14 operated on separate premises, even though operated under the
15 same management. Separate licenses are not required for
16 separate buildings on the same premises.

17 (3) In accordance with s. 408.805, an applicant or
18 licensee shall pay a fee for each license application
19 submitted under this part and part II of chapter 408. The
20 amount of the fee shall be established by rule and The
21 biennial license fee required of a center shall be determined
22 by the department, but may not exceed \$150.

23 (4) County-operated or municipally operated centers
24 applying for licensure under this part are exempt from the
25 payment of license fees.

26 ~~(5) The license for a center shall be displayed in a~~
27 ~~conspicuous place inside the center.~~

28 ~~(6) A license is valid only in the possession of the~~
29 ~~individual, firm, partnership, association, or corporation to~~
30 ~~which it is issued and is not subject to sale, assignment, or~~
31 ~~other transfer, voluntary or involuntary; nor is a license~~

1 ~~valid for any premises other than the premises for which~~
2 ~~originally issued.~~

3 Section 167. Section 429.909, Florida Statutes, is
4 amended to read:

5 429.909 Application for license.--

6 ~~(1) An application for a license to operate an adult~~
7 ~~day care center must be made to the agency on forms furnished~~
8 ~~by the agency and must be accompanied by the appropriate~~
9 ~~license fee unless the applicant is exempt from payment of the~~
10 ~~fee as provided in s. 429.907(4).~~

11 ~~(2) In addition to all provisions of part II of~~
12 ~~chapter 408, the applicant for licensure must furnish:~~

13 ~~(a) a description of the physical and mental~~
14 ~~capabilities and needs of the participants to be served and~~
15 ~~the availability, frequency, and intensity of basic services~~
16 ~~and of supportive and optional services to be provided and;~~

17 ~~(b) Satisfactory proof of financial ability to operate~~
18 ~~and conduct the center in accordance with the requirements of~~
19 ~~this part, which must include, in the case of an initial~~
20 ~~application, a 1 year operating plan and proof of a 3 month~~
21 ~~operating reserve fund; and~~

22 ~~(c) proof of adequate liability insurance coverage.~~

23 ~~(d) Proof of compliance with level 2 background~~
24 ~~screening as required under s. 429.919.~~

25 ~~(e) A description and explanation of any exclusions,~~
26 ~~permanent suspensions, or terminations of the application from~~
27 ~~the Medicare or Medicaid programs. Proof of compliance with~~
28 ~~disclosure of ownership and control interest requirements of~~
29 ~~the Medicare or Medicaid programs shall be accepted in lieu of~~
30 ~~this submission.~~

31

1 Section 168. Section 429.911, Florida Statutes, is
2 amended to read:

3 429.911 Denial, suspension, revocation of license;
4 emergency action; administrative fines; investigations and
5 inspections.--

6 (1) The agency may deny, revoke, and ~~or~~ suspend a
7 license under this part, impose an action under s. 408.814,
8 and ~~or may~~ impose an administrative fine against the owner of
9 an adult day care center or its operator or employee in the
10 manner provided in chapter 120 for the violation of any
11 provision of this part, part II of chapter 408, or applicable
12 rules.

13 (2) Each of the following actions by the owner of an
14 adult day care center or by its operator or employee is a
15 ground for action by the agency against the owner of the
16 center or its operator or employee:

17 (a) An intentional or negligent act materially
18 affecting the health or safety of center participants.

19 (b) A violation of this part or of any standard or
20 rule under this part or part II of chapter 408.

21 (c) A failure of persons subject to level 2 background
22 screening under s. 408.809 ~~429.174(1)~~ to meet the screening
23 standards of s. 435.04, or the retention by the center of an
24 employee subject to level 1 background screening standards
25 under s. ~~429.174(2)~~ who does not meet the screening standards
26 of s. 435.03 and for whom exemptions from disqualification
27 have not been provided by the agency.

28 (d) 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 center participants.

1 (e) Multiple or repeated violations of this part or of
2 any standard or rule adopted under this part or part II of
3 chapter 408.

4 ~~(f) Exclusion, permanent suspension, or termination of~~
5 ~~the owner, if an individual, officer, or board member of the~~
6 ~~adult day care center, if the owner is a firm, corporation,~~
7 ~~partnership, or association, or any person owning 5 percent or~~
8 ~~more of the center, from the Medicare or Medicaid program.~~

9 (3) The agency is responsible for all investigations
10 and inspections conducted pursuant to this part and s.
11 408.811.

12 Section 169. Section 429.913, Florida Statutes, is
13 amended to read:

14 429.913 Administrative fines; ~~interest~~.--

15 (1)(a) In addition to the requirements of part II of
16 chapter 408, if the agency determines that an adult day care
17 center is not operated in compliance with this part or with
18 rules adopted under this part, the agency, notwithstanding any
19 other administrative action it takes, shall make a reasonable
20 attempt to discuss with the owner each violation and
21 recommended corrective action prior to providing the owner
22 with written notification. The agency may request the
23 submission of a corrective action plan for the center which
24 demonstrates a good faith effort to remedy each violation by a
25 specific date, subject to the approval of the agency.

26 (b) The owner of a center or its operator or employee
27 found in violation of this part, part II of chapter 408, or
28 applicable rules ~~or of rules adopted under this part~~ may be
29 fined by the agency. A fine may not exceed \$500 for each
30 violation. In no event, however, may such fines in the
31 aggregate exceed \$5,000.

1 (c) The failure to correct a violation by the date set
2 by the agency, or the failure to comply with an approved
3 corrective action plan, is a separate violation for each day
4 such failure continues, unless the agency approves an
5 extension to a specific date.

6 ~~(d) If the owner of a center or its operator or~~
7 ~~employee appeals an agency action under this section and the~~
8 ~~fine is upheld, the violator shall pay the fine, plus interest~~
9 ~~at the legal rate specified in s. 687.01 for each day that the~~
10 ~~fine remains unpaid after the date set by the agency for~~
11 ~~payment of the fine.~~

12 (2) In determining whether to impose a fine and in
13 fixing the amount of any fine, the agency shall consider the
14 following factors:

15 (a) The gravity of the violation, including the
16 probability that death or serious physical or emotional harm
17 to a participant will result or has resulted, the severity of
18 the actual or potential harm, and the extent to which the
19 provisions of the applicable statutes or rules were violated.

20 (b) Actions taken by the owner or operator to correct
21 violations.

22 (c) Any previous violations.

23 (d) The financial benefit to the center of committing
24 or continuing the violation.

25 Section 170. Section 429.915, Florida Statutes, is
26 amended to read:

27 429.915 ~~Expiration of license; renewal;~~ Conditional
28 license ~~or permit.~~--

29 ~~(1) A license issued for the operation of an adult day~~
30 ~~care center, unless sooner suspended or revoked, expires 2~~
31 ~~years after the date of issuance. The agency shall notify a~~

1 ~~licensee at least 120 days before the expiration date that~~
2 ~~license renewal is required to continue operation. The~~
3 ~~notification must be provided electronically or by mail~~
4 ~~delivery. At least 90 days prior to the expiration date, an~~
5 ~~application for renewal must be submitted to the agency. A~~
6 ~~license shall be renewed, upon the filing of an application on~~
7 ~~forms furnished by the agency, if the applicant has first met~~
8 ~~the requirements of this part and of the rules adopted under~~
9 ~~this part. The applicant must file with the application~~
10 ~~satisfactory proof of financial ability to operate the center~~
11 ~~in accordance with the requirements of this part and in~~
12 ~~accordance with the needs of the participants to be served and~~
13 ~~an affidavit of compliance with the background screening~~
14 ~~requirements of s. 429.919.~~

15 ~~(2) A licensee against whom a revocation or suspension~~
16 ~~proceeding is pending at the time for license renewal may be~~
17 ~~issued a conditional license effective until final disposition~~
18 ~~by the agency of the proceeding. If judicial relief is sought~~
19 ~~from the final disposition, the court having jurisdiction may~~
20 ~~issue a conditional permit effective for the duration of the~~
21 ~~judicial proceeding.~~

22 ~~(3) In addition to the license categories available in~~
23 ~~part II of chapter 408, the agency may issue a conditional~~
24 ~~license to an applicant for license renewal or change of~~
25 ~~ownership if the applicant fails to meet all standards and~~
26 ~~requirements for licensure. A conditional license issued under~~
27 ~~this subsection must be limited to a specific period not~~
28 ~~exceeding 6 months, as determined by the agency, and must be~~
29 ~~accompanied by an approved plan of correction.~~

30 Section 171. Section 429.919, Florida Statutes, is
31 amended to read:

1 429.919 Background screening.--

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

6 1. ~~The adult day care center owner if an individual,~~
7 ~~the operator, and the financial officer.~~

8 2. ~~An officer or board member if the owner of the~~
9 ~~adult day care center is a firm, corporation, partnership, or~~
10 ~~association, or any person owning 5 percent or more of the~~
11 ~~facility, if the agency has probable cause to believe that~~
12 ~~such person has been convicted of any offense prohibited by s.~~
13 ~~435.04. For each officer, board member, or person owning 5~~
14 ~~percent or more who has been convicted of any such offense,~~
15 ~~the facility shall submit to the agency a description and~~
16 ~~explanation of the conviction at the time of license~~
17 ~~application. This subparagraph does not apply to a board~~
18 ~~member of a not for profit corporation or organization if the~~
19 ~~board member serves solely in a voluntary capacity, does not~~
20 ~~regularly take part in the day to day operational decisions of~~
21 ~~the corporation or organization, receives no remuneration for~~
22 ~~his or her services, and has no financial interest and has no~~
23 ~~family members with a financial interest in the corporation or~~
24 ~~organization, provided that the board member and facility~~
25 ~~submit a statement affirming that the board member's~~
26 ~~relationship to the facility satisfies the requirements of~~
27 ~~this subparagraph.~~

28 ~~(b) Proof of compliance with level 2 screening~~
29 ~~standards which has been submitted within the previous 5 years~~
30 ~~to meet any facility or professional licensure requirements of~~
31

1 ~~the agency or the Department of Health satisfies the~~
2 ~~requirements of this subsection.~~

3 ~~(c) The agency may grant a provisional license to an~~
4 ~~adult day care center applying for an initial license when~~
5 ~~each individual required by this subsection to undergo~~
6 ~~screening has completed the Department of Law Enforcement~~
7 ~~background check, but has not yet received results from the~~
8 ~~Federal Bureau of Investigation, or when a request for an~~
9 ~~exemption from disqualification has been submitted to the~~
10 ~~agency pursuant to s. 435.07, but a response has not been~~
11 ~~issued.~~

12 ~~(2)~~ The owner or administrator of an adult day care
13 center must conduct level 1 background screening as set forth
14 in chapter 435 on all employees hired on or after October 1,
15 1998, who provide basic services or supportive and optional
16 services to the participants. Such persons satisfy this
17 requirement if:

18 (1)(a) Proof of compliance with level 1 screening
19 requirements obtained to meet any professional license
20 requirements in this state is provided and accompanied, under
21 penalty of perjury, by a copy of the person's current
22 professional license and an affidavit of current compliance
23 with the background screening requirements.

24 (2)(b) The person required to be screened has been
25 continuously employed, without a breach in service that
26 exceeds 180 days, in the same type of occupation for which the
27 person is seeking employment and provides proof of compliance
28 with the level 1 screening requirement which is no more than 2
29 years old. Proof of compliance must be provided directly from
30 one employer or contractor to another, and not from the person
31 screened. Upon request, a copy of screening results shall be

1 provided to the person screened by the employer retaining
2 documentation of the screening.

3 ~~(3)(c)~~ The person required to be screened is employed
4 by a corporation or business entity or related corporation or
5 business entity that owns, operates, or manages more than one
6 facility or agency licensed under chapter 400 or this chapter,
7 and for whom a level 1 screening was conducted by the
8 corporation or business entity as a condition of initial or
9 continued employment.

10 Section 172. Section 429.921, Florida Statutes, is
11 repealed.

12 Section 173. Section 429.923, Florida Statutes, is
13 repealed.

14 Section 174. Section 429.925, Florida Statutes, is
15 amended to read:

16 429.925 Discontinuance of operation of adult day care
17 centers ~~Closing or change of owner or operator of center.--~~

18 ~~(1)~~ In addition to the requirements of part II of
19 chapter 408, before operation of an adult day care center may
20 be voluntarily discontinued, the operator must, ~~inform the~~
21 ~~agency in writing~~ at least 60 days before ~~prior to~~ the
22 discontinuance of operation. ~~The operator must also, at such~~
23 ~~time,~~ inform each participant of the fact and the proposed
24 date of ~~such~~ discontinuance of operation.

25 ~~(2)~~ ~~Immediately upon discontinuance of the operation~~
26 ~~of a center, the owner or operator shall surrender the license~~
27 ~~for the center to the agency, and the license shall be~~
28 ~~canceled by the agency.~~

29 ~~(3)~~ ~~If a center has a change of ownership, the new~~
30 ~~owner shall apply to the agency for a new license at least 60~~
31 ~~days before the date of the change of ownership.~~

1 ~~(4) If a center has a change of operator, the new~~
2 ~~operator shall notify the agency in writing within 30 days~~
3 ~~after the change of operator.~~

4 Section 175. Section 429.927, Florida Statutes, is
5 amended to read:

6 429.927 Right of entry and inspection.--In accordance
7 with s. 408.811, any duly designated officer or employee of
8 the agency or department has the right to enter the premises
9 of any adult day care center licensed pursuant to this part,
10 at any reasonable time, in order to determine the state of
11 compliance with this part, part II of chapter 408, and
12 applicable the rules or standards in force pursuant to this
13 part. ~~The right of entry and inspection also extends to any~~
14 ~~premises that the agency has reason to believe are being~~
15 ~~operated as a center without a license, but no entry or~~
16 ~~inspection of any unlicensed premises may be made without the~~
17 ~~permission of the owner or operator unless a warrant is first~~
18 ~~obtained from the circuit court authorizing entry or~~
19 ~~inspection. Any application for a center license or license~~
20 ~~renewal made pursuant to this part constitutes permission for,~~
21 ~~and complete acquiescence in, any entry or inspection of the~~
22 ~~premises for which the license is sought in order to~~
23 ~~facilitate verification of the information submitted on or in~~
24 ~~connection with the application.~~

25 Section 176. Section 429.929, Florida Statutes, is
26 amended to read:

27 429.929 Rules establishing standards.--

28 (1) The agency, in consultation with the department,
29 may adopt rules to administer the requirements of part II of
30 chapter 408. The Department of Elderly Affairs, in conjunction
31 with the agency, shall adopt rules to implement the provisions

1 of this part. The rules must include reasonable and fair
2 standards. Any conflict between these standards and those that
3 may be set forth in local, county, or municipal ordinances
4 shall be resolved in favor of those having statewide effect.

5 Such standards must relate to:

6 (a) The maintenance of adult day care centers with
7 respect to plumbing, heating, lighting, ventilation, and other
8 building conditions, including adequate meeting space, to
9 ensure the health, safety, and comfort of participants and
10 protection from fire hazard. Such standards may not conflict
11 with chapter 553 and must be based upon the size of the
12 structure and the number of participants.

13 (b) The number and qualifications of all personnel
14 employed by adult day care centers who have responsibilities
15 for the care of participants.

16 (c) All sanitary conditions within adult day care
17 centers and their surroundings, including water supply, sewage
18 disposal, food handling, and general hygiene, and maintenance
19 of sanitary conditions, to ensure the health and comfort of
20 participants.

21 (d) Basic services provided by adult day care centers.

22 (e) Supportive and optional services provided by adult
23 day care centers.

24 (f) Data and information relative to participants and
25 programs of adult day care centers, including, but not limited
26 to, the physical and mental capabilities and needs of the
27 participants, the availability, frequency, and intensity of
28 basic services and of supportive and optional services
29 provided, the frequency of participation, the distances
30 traveled by participants, the hours of operation, the number
31

1 of referrals to other centers or elsewhere, and the incidence
2 of illness.

3 (g) Components of a comprehensive emergency management
4 plan, developed in consultation with the Department of Health,
5 the Agency for Health Care Administration, and the Department
6 of Community Affairs.

7 ~~(2) Pursuant to s. 119.07, the agency may charge a fee~~
8 ~~for furnishing a copy of this part, or of the rules adopted~~
9 ~~under this part, to any person upon request for the copy.~~

10 (2)(3) Pursuant to this part, s. 408.811, and
11 applicable rules ~~adopted by the department~~, the agency may
12 conduct an abbreviated biennial inspection of key
13 quality-of-care standards, in lieu of a full inspection, of a
14 center that has a record of good performance. However, the
15 agency must conduct a full inspection of a center that has had
16 one or more confirmed complaints within the licensure period
17 immediately preceding the inspection or which has a serious
18 problem identified during the abbreviated inspection. The
19 agency shall develop the key quality-of-care standards, taking
20 into consideration the comments and recommendations of the
21 Department of Elderly Affairs and of provider groups. These
22 standards shall be included in rules adopted by the Department
23 of Elderly Affairs.

24 Section 177. Section 429.933, Florida Statutes, is
25 repealed.

26 Section 178. Subsections (9) and (10) of section
27 440.102, Florida Statutes, are amended to read:

28 440.102 Drug-free workplace program requirements.--The
29 following provisions apply to a drug-free workplace program
30 implemented pursuant to law or to rules adopted by the Agency
31 for Health Care Administration:

- 1 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.--
- 2 (a) The requirements of part II of chapter 408 apply
- 3 to the provision of services that require licensure pursuant
- 4 to this section and part II of chapter 408 and to entities
- 5 licensed by or applying for such licensure from the agency
- 6 pursuant to this section. A license issued by the agency is
- 7 required in order to operate a drug-free workplace laboratory.
- 8 ~~(b)(a)~~ A laboratory may analyze initial or
- 9 confirmation test specimens only if:
- 10 1. The laboratory obtains a license under part II of
- 11 chapter 408 and s. 112.0455(17). Each applicant for licensure
- 12 and each licensee must comply with all requirements of this
- 13 section, part II of chapter 408, and applicable rules. is
- 14 ~~licensed and approved by the Agency for Health Care~~
- 15 ~~Administration using criteria established by the United States~~
- 16 ~~Department of Health and Human Services as general guidelines~~
- 17 ~~for modeling the state drug testing program pursuant to this~~
- 18 ~~section or the laboratory is certified by the United States~~
- 19 ~~Department of Health and Human Services.~~
- 20 2. The laboratory has written procedures to ensure the
- 21 chain of custody.
- 22 3. The laboratory follows proper quality control
- 23 procedures, including, but not limited to:
- 24 a. The use of internal quality controls, including the
- 25 use of samples of known concentrations which are used to check
- 26 the performance and calibration of testing equipment, and
- 27 periodic use of blind samples for overall accuracy.
- 28 b. An internal review and certification process for
- 29 drug test results, conducted by a person qualified to perform
- 30 that function in the testing laboratory.
- 31

1 c. Security measures implemented by the testing
2 laboratory to preclude adulteration of specimens and drug test
3 results.

4 d. Other necessary and proper actions taken to ensure
5 reliable and accurate drug test results.

6 ~~(c)(b)~~ A laboratory shall disclose to the medical
7 review officer a written positive confirmed test result report
8 within 7 working days after receipt of the sample. All
9 laboratory reports of a drug test result must, at a minimum,
10 state:

11 1. The name and address of the laboratory that
12 performed the test and the positive identification of the
13 person tested.

14 2. Positive results on confirmation tests only, or
15 negative results, as applicable.

16 3. A list of the drugs for which the drug analyses
17 were conducted.

18 4. The type of tests conducted for both initial tests
19 and confirmation tests and the minimum cutoff levels of the
20 tests.

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

24
25 A report must not disclose the presence or absence of any drug
26 other than a specific drug and its metabolites listed pursuant
27 to this section.

28 ~~(d)(e)~~ The laboratory shall submit to the Agency for
29 Health Care Administration a monthly report with statistical
30 information regarding the testing of employees and job
31 applicants. The report must include information on the methods

1 of analysis conducted, the drugs tested for, the number of
2 positive and negative results for both initial tests and
3 confirmation tests, and any other information deemed
4 appropriate by the Agency for Health Care Administration. A
5 monthly report must not identify specific employees or job
6 applicants.

7 (10) RULES.--The Agency for Health Care Administration
8 shall adopt rules pursuant to s. 112.0455, part II of chapter
9 408, and criteria established by the United States Department
10 of Health and Human Services as general guidelines for
11 modeling drug-free workplace laboratories ~~the state~~
12 ~~drug testing program~~, concerning, but not limited to:

13 (a) Standards for licensing drug-testing laboratories
14 and suspension and revocation of such licenses.

15 (b) Urine, hair, blood, and other body specimens and
16 minimum specimen amounts that are appropriate for drug
17 testing.

18 (c) Methods of analysis and procedures to ensure
19 reliable drug-testing results, including standards for initial
20 tests and confirmation tests.

21 (d) Minimum cutoff detection levels for each drug or
22 metabolites of such drug for the purposes of determining a
23 positive test result.

24 (e) Chain-of-custody procedures to ensure proper
25 identification, labeling, and handling of specimens tested.

26 (f) Retention, storage, and transportation procedures
27 to ensure reliable results on confirmation tests and retests.

28 Section 179. Paragraph (1) of subsection (1) of
29 section 468.505, Florida Statutes, is amended to read:

30 468.505 Exemptions; exceptions.--
31

1 (1) Nothing in this part may be construed as
2 prohibiting or restricting the practice, services, or
3 activities of:

4 (1) A person employed by a nursing facility exempt
5 from licensing under s. 395.002~~(12)~~~~(13)~~, or a person exempt
6 from licensing under s. 464.022.

7 Section 180. Subsection (3) is added to section
8 483.035, Florida Statutes, to read:

9 483.035 Clinical laboratories operated by
10 practitioners for exclusive use; licensure and regulation.--

11 (3) The requirements of part II of chapter 408 apply
12 to the provision of services that require licensure pursuant
13 to this part and part II of chapter 408 and to entities
14 licensed by or applying for such licensure from the agency
15 pursuant to this part. A license issued by the agency is
16 required in order to operate a clinical laboratory.

17 Section 181. Subsection (1) of section 483.051,
18 Florida Statutes, is amended to read:

19 483.051 Powers and duties of the agency.--The agency
20 shall adopt rules to implement this part, which rules must
21 include, but are not limited to, the following:

22 (1) LICENSING; QUALIFICATIONS.--The agency shall
23 provide for biennial licensure of all clinical laboratories
24 meeting the requirements of this part and shall prescribe the
25 qualifications necessary for such licensure. ~~A license issued~~
26 ~~for operating a clinical laboratory, unless sooner suspended~~
27 ~~or revoked, expires on the date set forth by the agency on the~~
28 ~~face of the license.~~

29 Section 182. Section 483.061, Florida Statutes, is
30 amended to read:

31 483.061 Inspection of clinical laboratories.--

1 (1) In addition to the requirements of s. 408.811, the
2 agency shall ensure that each clinical laboratory subject to
3 this part is inspected either onsite or offsite when deemed
4 necessary by the agency, but at least every 2 years, for the
5 purpose of evaluating the operation, supervision, and
6 procedures of the facility to ensure compliance with this
7 part. Collection stations and branch offices may be inspected
8 either onsite or offsite, when deemed necessary by the agency.
9 The agency may conduct or cause to be conducted the following
10 ~~announced or unannounced inspections at any reasonable time:~~
11 (a) An inspection conducted at the direction of the
12 federal Centers for Medicare and Medicaid Services Health Care
13 ~~Financing Administration.~~
14 ~~(b) A licensure inspection.~~
15 (b)(e) A validation inspection.
16 ~~(c)(d)~~ A complaint investigation, including a full
17 licensure investigation with a review of all licensure
18 standards as outlined in rule. Complaints received by the
19 agency from individuals, organizations, or other sources are
20 subject to review and investigation by the agency. If a
21 complaint has been filed against a laboratory or if a
22 laboratory has a substantial licensure deficiency, the agency
23 may inspect the laboratory annually or as the agency considers
24 necessary.
25 (2) ~~However,~~ For laboratories operated under s.
26 483.035, biennial licensure inspections shall be scheduled so
27 as to cause the least disruption to the practitioner's
28 scheduled patients.
29 ~~(2) The right of entry and inspection is extended to~~
30 ~~any premises that is maintained as a laboratory without a~~
31 ~~license, but such entry or inspection may not be made without~~

1 ~~the permission of the owner or person in charge of the~~
2 ~~laboratory, unless an inspection warrant as defined in s.~~
3 ~~933.20 is first obtained.~~

4 (3) The agency may ~~shall~~ inspect an out-of-state
5 clinical laboratory under this section at the expense of the
6 out-of-state clinical laboratory to determine whether the
7 laboratory meets the requirements of this part and part II of
8 chapter 408.

9 (4) The agency shall accept, in lieu of its own
10 periodic inspections for licensure, the survey of or
11 inspection by private accrediting organizations that perform
12 inspections of clinical laboratories accredited by such
13 organizations, including postinspection activities required by
14 the agency.

15 (a) The agency shall accept inspections performed by
16 such organizations if the accreditation is not provisional, if
17 such organizations perform postinspection activities required
18 by the agency and provide the agency with all necessary
19 inspection and postinspection reports and information
20 necessary for enforcement, if such organizations apply
21 standards equal to or exceeding standards established and
22 approved by the agency, and if such accrediting organizations
23 are approved by the federal Health Care Financing
24 Administration to perform such inspections.

25 (b) The agency may conduct complaint investigations
26 made against laboratories inspected by accrediting
27 organizations.

28 (c) The agency may conduct sample validation
29 inspections of laboratories inspected by accrediting
30 organizations to evaluate the accreditation process used by an
31 accrediting organization.

1 (d) The agency may conduct a full inspection if an
2 accrediting survey has not been conducted within the previous
3 24 months, and the laboratory must pay the appropriate license
4 ~~inspection~~ fee under s. 483.172(2) ~~s. 483.172~~.

5 (e) The agency shall develop, and adopt, by rule,
6 criteria for accepting inspection and postinspection reports
7 of accrediting organizations in lieu of conducting a state
8 licensure inspection.

9 Section 183. Section 483.091, Florida Statutes, is
10 amended to read:

11 483.091 Clinical laboratory license.--~~A person may not~~
12 ~~conduct, maintain, or operate a clinical laboratory in this~~
13 ~~state, except a laboratory that is exempt under s. 483.031,~~
14 ~~unless the clinical laboratory has obtained a license from the~~
15 ~~agency.~~ A clinical laboratory may not send a specimen drawn
16 within this state to any clinical laboratory outside the state
17 for examination unless the out-of-state laboratory has
18 obtained a license from the agency. ~~A license is valid only~~
19 ~~for the person or persons to whom it is issued and may not be~~
20 ~~sold, assigned, or transferred, voluntarily or involuntarily,~~
21 ~~and is not valid for any premises other than those for which~~
22 ~~the license is issued. However,~~ A new license may be secured
23 for the new location before the actual change, if the
24 contemplated change complies with this part, part II of
25 chapter 408, and the applicable rules ~~adopted under this part~~.
26 ~~Application for a new clinical laboratory license must be made~~
27 ~~60 days before a change in the ownership of the clinical~~
28 ~~laboratory.~~

29 Section 184. Section 483.101, Florida Statutes, is
30 amended to read:

31 483.101 ~~Application for~~ Clinical laboratory license.--

1 ~~(1) An application for a clinical laboratory license~~
2 ~~must be made under oath by the owner or director of the~~
3 ~~clinical laboratory or by the public official responsible for~~
4 ~~operating a state, municipal, or county clinical laboratory or~~
5 ~~institution that contains a clinical laboratory, upon forms~~
6 ~~provided by the agency.~~

7 ~~(2) Each applicant for licensure must comply with the~~
8 ~~following requirements:~~

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

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

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

30 ~~(d) A provisional license may be granted to an~~
31 ~~applicant when each individual required by this section to~~

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

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

28 ~~(f) Each applicant must submit to the agency a~~
29 ~~description and explanation of any conviction of an offense~~
30 ~~prohibited under the level 2 standards of chapter 435 by a~~
31 ~~member of the board of directors of the applicant, its~~

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

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

22 ~~(h) The agency may deny or revoke licensure if the~~
23 ~~applicant:~~

24 ~~1. Has falsely represented a material fact in the~~
25 ~~application required by paragraph (e) or paragraph (f), or has~~
26 ~~omitted any material fact from the application required by~~
27 ~~paragraph (e) or paragraph (f); or~~

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

31

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

3 ~~(3) A license must be issued authorizing the~~
4 ~~performance of one or more clinical laboratory procedures or~~
5 ~~one or more tests on each specialty or subspecialty. A~~
6 ~~separate license is required of all laboratories maintained on~~
7 ~~separate premises even if the laboratories are operated under~~
8 ~~the same management. Upon receipt of a request for an~~
9 ~~application for a clinical laboratory license, the agency~~
10 ~~shall provide to the applicant a copy of the rules relating to~~
11 ~~licensure and operations applicable to the laboratory for~~
12 ~~which licensure is sought.~~

13 Section 185. Section 483.106, Florida Statutes, is
14 amended to read:

15 483.106 Application for a certificate of
16 exemption.--An application for a certificate of exemption must
17 be made under oath by the owner or director of a clinical
18 laboratory that performs only waived tests as defined in s.
19 483.041. A certificate of exemption authorizes a clinical
20 laboratory to perform waived tests. Laboratories maintained on
21 separate premises and operated under the same management may
22 apply for a single certificate of exemption or multiple
23 certificates of exemption. The agency shall, by rule, specify
24 the process for biennially issuing certificates of exemption.
25 Sections 483.011, 483.021, 483.031, 483.041, 483.172, and
26 483.23, ~~and 483.25~~ apply to a clinical laboratory that obtains
27 a certificate of exemption under this section.

28 Section 186. Section 483.111, Florida Statutes, is
29 amended to read:

30 483.111 Limitations on licensure.--A license may be
31 issued to a clinical laboratory to perform only those clinical

1 laboratory procedures and tests that are within the
2 specialties or subspecialties in which the clinical laboratory
3 personnel are qualified. A license may not be issued unless
4 the agency determines that the clinical laboratory is
5 adequately staffed and equipped to operate in conformity with
6 the requirements of this part, part II of chapter 408, and
7 applicable ~~the rules adopted under this part.~~

8 Section 187. Section 483.131, Florida Statutes, is
9 repealed.

10 Section 188. Subsections (1) and (2) of section
11 483.172, Florida Statutes, are amended to read:

12 483.172 License fees.--

13 (1) In accordance with s. 408.805, an applicant or a
14 licensee shall pay a fee for each license application
15 submitted under this part, part II of chapter 408, and
16 applicable rules. ~~The agency shall collect fees for all~~
17 ~~licenses issued under this part. Each fee is due at the time~~
18 ~~of application and must be payable to the agency to be~~
19 ~~deposited in the Health Care Trust Fund administered by the~~
20 ~~agency.~~

21 (2) The biennial license fee schedule is as follows:

22 (a) If a laboratory performs not more than 2,000 tests
23 annually, the fee is \$400.

24 (b) If a laboratory performs not more than 3
25 categories of procedures with a total annual volume of more
26 than 2,000 but no more than 10,000 tests, the license fee is
27 \$965.

28 (c) If a laboratory performs at least 4 categories of
29 procedures with a total annual volume of not more than 10,000
30 tests, the license fee is \$1,294.

31

1 (d) If a laboratory performs not more than 3
2 categories of procedures with a total annual volume of more
3 than 10,000 but not more than 25,000 tests, the license fee is
4 \$1,592.

5 (e) If a laboratory performs at least 4 categories of
6 procedures with a total annual volume of more than 10,000 but
7 not more than 25,000 tests, the license fee is \$2,103.

8 (f) If a laboratory performs a total of more than
9 25,000 but not more than 50,000 tests annually, the license
10 fee is \$2,364.

11 (g) If a laboratory performs a total of more than
12 50,000 but not more than 75,000 tests annually, the license
13 fee is \$2,625.

14 (h) If a laboratory performs a total of more than
15 75,000 but not more than 100,000 tests annually, the license
16 fee is \$2,886.

17 (i) If a laboratory performs a total of more than
18 100,000 but not more than 500,000 tests annually, the license
19 fee is \$3,397.

20 (j) If a laboratory performs a total of more than
21 500,000 but not more than 1 million tests annually, the
22 license fee is \$3,658.

23 (k) If a laboratory performs a total of more than 1
24 million tests annually, the license fee is \$3,919.

25 Section 189. Section 483.201, Florida Statutes, is
26 amended to read:

27 483.201 Grounds for disciplinary action against
28 clinical laboratories.--In addition to the requirements of
29 part II of chapter 408, the following acts constitute grounds
30 for which a disciplinary action specified in s. 483.221 may be
31 taken against a clinical laboratory:

1 ~~(1) Making a fraudulent statement on an application~~
2 ~~for a clinical laboratory license or any other document~~
3 ~~required by the agency.~~

4 (1)~~(2)~~ Permitting unauthorized persons to perform
5 technical procedures or to issue reports.

6 (2)~~(3)~~ Demonstrating incompetence or making consistent
7 errors in the performance of clinical laboratory examinations
8 and procedures or erroneous reporting.

9 (3)~~(4)~~ Performing a test and rendering a report
10 thereon to a person not authorized by law to receive such
11 services.

12 (4)~~(5)~~ Knowingly having professional connection with
13 or knowingly lending the use of the name of the licensed
14 clinical laboratory or its director to an unlicensed clinical
15 laboratory.

16 (5)~~(6)~~ Violating or aiding and abetting in the
17 violation of any provision of this part or the rules adopted
18 under this part.

19 (6)~~(7)~~ Failing to file any report required by the
20 provisions of this part or the rules adopted under this part.

21 (7)~~(8)~~ Reporting a test result for a clinical specimen
22 if the test was not performed on the clinical specimen.

23 (8)~~(9)~~ Performing and reporting tests in a specialty
24 or subspecialty in which the laboratory is not licensed.

25 (9)~~(10)~~ Knowingly advertising false services or
26 credentials.

27 (10)~~(11)~~ Failing to correct deficiencies within the
28 time required by the agency.

29 Section 190. Section 483.221, Florida Statutes, is
30 amended to read:

31 483.221 Administrative fines ~~penalties~~.--

1 (1)(a) In accordance with part II of chapter 408, the
2 agency may ~~deny, suspend, revoke, annul, limit, or deny~~
3 ~~renewal of a license or~~ impose an administrative fine, not to
4 exceed \$1,000 per violation, for the violation of any
5 provision of this part or rules adopted under this part. ~~Each~~
6 ~~day of violation constitutes a separate violation and is~~
7 ~~subject to a separate fine.~~

8 (2)(b) In determining the penalty to be imposed for a
9 violation, as provided in subsection (1) ~~paragraph (a)~~, the
10 following factors must be considered:

11 (a)1. The severity of the violation, including the
12 probability that death or serious harm to the health or safety
13 of any person will result or has resulted; the severity of the
14 actual or potential harm; and the extent to which the
15 provisions of this part were violated.

16 (b)2. Actions taken by the licensee to correct the
17 violation or to remedy complaints.

18 (c)3. Any previous violation by the licensee.

19 (d)4. The financial benefit to the licensee of
20 committing or continuing the violation.

21 (c) ~~All amounts collected under this section must be~~
22 ~~deposited into the Health Care Trust Fund administered by the~~
23 ~~agency.~~

24 (2) ~~The agency may issue an emergency order~~
25 ~~immediately suspending, revoking, annulling, or limiting a~~
26 ~~license if it determines that any condition in the licensed~~
27 ~~facility presents a clear and present danger to public health~~
28 ~~or safety.~~

29 Section 191. Section 483.25, Florida Statutes, is
30 repealed.

31

1 Section 192. Section 483.291, Florida Statutes, is
2 amended to read:

3 483.291 Powers and duties of the agency; rules.--The
4 agency shall adopt rules to implement this part and part II of
5 chapter 408, which rules must include the following:

6 (1) LICENSING STANDARDS.--The agency ~~shall license all~~
7 ~~multiphasic health testing centers meeting the requirements of~~
8 ~~this part and~~ shall prescribe standards necessary for
9 licensure.

10 (2) FEES.--In accordance with s. 408.805, an applicant
11 or a licensee shall pay a fee for each license application
12 submitted under this part, part II of chapter 408, and
13 applicable rules. ~~The agency shall establish annual fees,~~
14 ~~which shall be reasonable in amount, for licensing of centers.~~
15 ~~The fees must be sufficient in amount to cover the cost of~~
16 ~~licensing and inspecting centers.~~

17 ~~(a) The annual licensure fee is due at the time of~~
18 ~~application and is payable to the agency to be deposited in~~
19 ~~the Health Care Trust Fund administered by the agency. The~~
20 ~~license fee must be not less than \$600 \$300 or more than~~
21 \$2,000 \$1,000.

22 ~~(b) The fee for late filing of an application for~~
23 ~~license renewal is \$200 and is in addition to the licensure~~
24 ~~fee due for renewing the license.~~

25 ~~(3) ANNUAL LICENSING. The agency shall provide for~~
26 ~~annual licensing of centers. Any center that fails to pay the~~
27 ~~proper fee or otherwise fails to qualify by the date of~~
28 ~~expiration of its license is delinquent, and its license is~~
29 ~~automatically canceled without notice or further proceeding.~~
30 ~~Upon cancellation of its license under this subsection, a~~
31 ~~center may have its license reinstated only upon application~~

1 ~~and qualification as provided for initial applicants and upon~~
2 ~~payment of all delinquent fees.~~

3 (3)~~(4)~~ STANDARDS OF PERFORMANCE.--The agency shall
4 prescribe standards for the performance of health testing
5 procedures.

6 (4)~~(5)~~ CONSTRUCTION OF CENTERS.--The agency may adopt
7 rules to ensure that centers comply with all local, county,
8 state, and federal standards for the construction, renovation,
9 maintenance, or repair of centers, which standards must ensure
10 the conduct and operation of the centers in a manner that will
11 protect the public health.

12 (5)~~(6)~~ SAFETY AND SANITARY CONDITIONS WITHIN THE
13 CENTER AND ITS SURROUNDINGS.--The agency shall establish
14 standards relating to safety and sanitary conditions within
15 the center and its surroundings, including water supply;
16 sewage; the handling of specimens; identification,
17 segregation, and separation of biohazardous waste as required
18 by s. 381.0098; storage of chemicals; workspace; firesafety;
19 and general measures, which standards must ensure the
20 protection of the public health. The agency shall determine
21 compliance by a multiphasic health testing center with the
22 requirements of s. 381.0098 by verifying that the center has
23 obtained all required permits.

24 (6)~~(7)~~ EQUIPMENT.--The agency shall establish minimum
25 standards for center equipment essential to the proper conduct
26 and operation of the center.

27 (7)~~(8)~~ PERSONNEL.--The agency shall prescribe minimum
28 qualifications for center personnel. A center may employ as a
29 medical assistant a person who has at least one of the
30 following qualifications:
31

1 (a) Prior experience of not less than 6 months as a
2 medical assistant in the office of a licensed medical doctor
3 or osteopathic physician or in a hospital, an ambulatory
4 surgical center, a home health agency, or a health maintenance
5 organization.

6 (b) Certification and registration by the American
7 Medical Technologists Association or other similar
8 professional association approved by the agency.

9 (c) Prior employment as a medical assistant in a
10 licensed center for at least 6 consecutive months at some time
11 during the preceding 2 years.

12 Section 193. Section 483.294, Florida Statutes, is
13 amended to read:

14 483.294 Inspection of centers.--In accordance with s.
15 408.811, the agency shall, at least once annually, inspect the
16 premises and operations of all centers subject to licensure
17 under this part, ~~without prior notice to the centers, for the~~
18 ~~purpose of studying and evaluating the operation, supervision,~~
19 ~~and procedures of such facilities, to determine their~~
20 ~~compliance with agency standards and to determine their effect~~
21 ~~upon the health and safety of the people of this state.~~

22 Section 194. Section 483.30, Florida Statutes, is
23 amended to read:

24 483.30 Licensing of centers.--The requirements of part
25 II of chapter 408 apply to the provision of services that
26 require licensure pursuant to this part and part II of chapter
27 408 and to entities licensed by or applying for such licensure
28 from the agency pursuant to this part. A license issued by the
29 agency is required in order to operate a center.

30 ~~(1) A person may not conduct, maintain, or operate a~~
31 ~~multiphasic health testing center in this state without~~

1 ~~obtaining a multiphasic health testing center license from the~~
2 ~~agency. The license is valid only for the person or persons to~~
3 ~~whom it is issued and may not be sold, assigned, or~~
4 ~~transferred, voluntarily or involuntarily.~~ A license is not
5 valid for any premises other than the center for which it is
6 issued. However, a new license may be secured for the new
7 location for a fixed center before the actual change, if the
8 contemplated change is in compliance with this part and the
9 rules adopted under this part. ~~A center must be relicensed if~~
10 ~~a change of ownership occurs. Application for relicensure must~~
11 ~~be made 60 days before the change of ownership.~~

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 employee, or other similarly~~
18 ~~titled individual who is responsible for the daily operation~~
19 ~~of the center, and of the financial officer, or other~~
20 ~~similarly titled individual who is responsible for the~~
21 ~~financial operation of the center, 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 Section 195. Section 483.302, Florida Statutes, is
9 amended to read:

10 483.302 Application for license.--

11 ~~(1) Application for a license as required by s. 483.30~~
12 ~~must be made to the agency on forms furnished by it and must~~
13 ~~be accompanied by the appropriate license fee.~~

14 ~~(2) The application for a license must shall contain:~~

15 ~~(1)(a) A determination as to whether the facility will~~
16 ~~be fixed or mobile and the location for a fixed facility.~~

17 ~~(b) The name and address of the owner if an~~
18 ~~individual; if the owner is a firm, partnership, or~~
19 ~~association, the name and address of every member thereof; if~~
20 ~~the owner is a corporation, its name and address and the name~~
21 ~~and address of its medical director and officers and of each~~
22 ~~person having at least a 10 percent interest in the~~
23 ~~corporation.~~

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

1 ~~(d) The name by which the facility is to be known.~~

2 ~~(3)(e)~~ The name, address, and Florida physician's
3 license number of the medical director.

4 Section 196. Section 483.311, Florida Statutes, is
5 repealed.

6 Section 197. Subsections (2) through (8) of section
7 483.317, Florida Statutes, are renumbered as subsections (1)
8 through (7), respectively, and present subsection (1) of that
9 section is amended to read:

10 483.317 Grounds for disciplinary action against
11 centers.--The following acts constitute grounds for which a
12 disciplinary action specified in s. 483.32 may be taken
13 against a center:

14 ~~(1) Making a fraudulent statement on an application~~
15 ~~for a license or on any other document required by the agency~~
16 ~~pursuant to this part.~~

17 Section 198. Section 483.32, Florida Statutes, is
18 amended to read:

19 483.32 Administrative fines ~~penalties~~.--

20 (1)~~(a)~~ The agency may ~~deny, suspend, revoke, annul,~~
21 ~~limit, or deny renewal of a license or~~ impose an
22 administrative fine, not to exceed \$500 per violation, for the
23 violation of any provision of this part, part II of chapter
24 408, or applicable rules adopted under this part. ~~Each day of~~
25 ~~violation constitutes a separate violation and is subject to a~~
26 ~~separate fine.~~

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

30 ~~(a)1-~~ The severity of the violation, including the
31 probability that death or serious harm to the health or safety

1 of any person will result or has resulted; the severity of the
2 actual or potential harm; and the extent to which the
3 provisions of this part were violated.

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

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

7 ~~(d)4.~~ The financial benefit to the licensee of
8 committing or continuing the violation.

9 ~~(c) All amounts collected under this section must be
10 deposited into the Health Care Trust Fund administered by the
11 agency.~~

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

17 Section 199. Subsections (2) and (3) of section
18 483.322, Florida Statutes, are renumbered as subsections (1)
19 and (2), respectively, and present subsection (1) of that
20 section is amended to read:

21 483.322 Offenses.--It is unlawful for any person to:

22 ~~(1) Operate, maintain, direct, or engage in the
23 business of operating a multiphasic health testing center
24 unless the person has obtained a license for the center.~~

25 Section 200. Section 483.328, Florida Statutes, is
26 repealed.

27 Section 201. Subsection (2) of section 765.541,
28 Florida Statutes, is amended to read:

29 765.541 Certification of organizations engaged in the
30 practice of cadaveric organ and tissue procurement.--The
31 Agency for Health Care Administration shall:

1 (2) Adopt rules that set forth appropriate standards
2 and guidelines for the program in accordance with ss.
3 765.541-765.546 and part II of chapter 408. These standards
4 and guidelines must be substantially based on the existing
5 laws of the Federal Government and this state and the existing
6 standards and guidelines of the United Network for Organ
7 Sharing (UNOS), the American Association of Tissue Banks
8 (AATB), the South-Eastern Organ Procurement Foundation
9 (SEOPF), the North American Transplant Coordinators
10 Organization (NATCO), and the Eye Bank Association of America
11 (EBAA). In addition, the Agency for Health Care Administration
12 shall, before adopting these standards and guidelines, seek
13 input from all organ procurement organizations, tissue banks,
14 and eye banks based in this state;

15 Section 202. Subsection (1) of section 765.542,
16 Florida Statutes, is amended to read:

17 765.542 Certification of organ procurement
18 organizations, tissue banks, and eye banks.--

19 (1) The requirements of part II of chapter 408 apply
20 to the provision of services that require licensure pursuant
21 to ss. 765.541-765.546 and part II of chapter 408 and to
22 entities licensed or certified by or applying for such
23 licensure or certification from the Agency for Health Care
24 Administration pursuant to ss. 765.541-765.546. An
25 organization, agency, or other entity may not engage in the
26 practice of organ procurement in this state without being
27 designated as an organ procurement organization by the
28 secretary of the United States Department of Health and Human
29 Services and being appropriately certified by the Agency for
30 Health Care Administration. As used in this subsection, the
31 term "procurement" includes the retrieval, processing, or

1 distribution of human organs. A physician or organ procurement
2 organization based outside this state is exempt from these
3 certification requirements if:

4 (a) The organs are procured for an out-of-state
5 patient who is listed on, or referred through, the United
6 Network for Organ Sharing System; and

7 (b) The organs are procured through an agreement of an
8 organ procurement organization certified by the state.

9 Section 203. Section 765.544, Florida Statutes, is
10 amended to read:

11 765.544 Fees; Florida Organ and Tissue Donor Education
12 and Procurement Trust Fund.--

13 (1) In accordance with s. 408.805, an applicant or a
14 certificateholder shall pay a fee for each application
15 submitted under this part, part II of chapter 408, and
16 applicable rules. The amount of the fee shall be as follows:

17 ~~The Agency for Health Care Administration shall collect~~

18 (a) An initial application fee of \$1,000 from organ
19 procurement organizations and tissue banks and \$500 from eye
20 banks. ~~The fee must be submitted with each application for~~
21 ~~initial certification and is nonrefundable.~~

22 (b)(2) ~~The Agency for Health Care Administration shall~~
23 ~~assess~~ Annual fees to be used, in the following order of
24 priority, for the certification program, the advisory board,
25 maintenance of the organ and tissue donor registry, and the
26 organ and tissue donor education program in the following
27 amounts, which may not exceed \$35,000 per organization:

28 1.(a) Each general organ procurement organization
29 shall pay the greater of \$1,000 or 0.25 percent of its total
30 revenues produced from procurement activity in this state by
31

1 the certificateholder during its most recently completed
2 fiscal year or operational year.

3 ~~2.(b)~~ Each bone and tissue procurement agency or bone
4 and tissue bank shall pay the greater of \$1,000 or 0.25
5 percent of its total revenues from procurement and processing
6 activity in this state by the certificateholder during its
7 most recently completed fiscal year or operational year.

8 ~~3.(c)~~ Each eye bank shall pay the greater of \$500 or
9 0.25 percent of its total revenues produced from procurement
10 activity in this state by the certificateholder during its
11 most recently completed fiscal year or operational year.

12 ~~(2)(3)~~ The Agency for Health Care Administration shall
13 ~~specify provide~~ by rule ~~the for~~ administrative penalties for
14 the purpose of ensuring adherence to the standards of quality
15 and practice required by this chapter, part II of chapter 408,
16 and applicable rules of the agency for continued
17 certification.

18 ~~(3)(4)(a)~~ Proceeds from fees, administrative
19 penalties, and surcharges collected pursuant to this section
20 ~~subsections (2) and (3)~~ must be deposited into the Florida
21 Organ and Tissue Donor Education and Procurement Trust Fund
22 created by s. 765.52155.

23 (b) Moneys deposited in the trust fund pursuant to
24 this section must be used exclusively for the implementation,
25 administration, and operation of the certification program and
26 the advisory board, for maintaining the organ and tissue donor
27 registry, and for organ and tissue donor education.

28 ~~(4)(5)~~ As used in this section, the term "procurement
29 activity in this state" includes the bringing into this state
30 for processing, storage, distribution, or transplantation of
31

1 | organs or tissues that are initially procured in another state
2 | or country.

3 | Section 204. Subsection (4) of section 766.118,
4 | Florida Statutes, is amended to read:

5 | 766.118 Determination of noneconomic damages.--

6 | (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE
7 | OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND
8 | CARE.--Notwithstanding subsections (2) and (3), with respect
9 | to a cause of action for personal injury or wrongful death
10 | arising from medical negligence of practitioners providing
11 | emergency services and care, as defined in s. 395.002~~(9)~~~~(10)~~,
12 | or providing services as provided in s. 401.265, or providing
13 | services pursuant to obligations imposed by 42 U.S.C. s.
14 | 1395dd to persons with whom the practitioner does not have a
15 | then-existing health care patient-practitioner relationship
16 | for that medical condition:

17 | (a) Regardless of the number of such practitioner
18 | defendants, noneconomic damages shall not exceed \$150,000 per
19 | claimant.

20 | (b) Notwithstanding paragraph (a), the total
21 | noneconomic damages recoverable by all claimants from all such
22 | practitioners shall not exceed \$300,000.

23 |
24 | The limitation provided by this subsection applies only to
25 | noneconomic damages awarded as a result of any act or omission
26 | of providing medical care or treatment, including diagnosis
27 | that occurs prior to the time the patient is stabilized and is
28 | capable of receiving medical treatment as a nonemergency
29 | patient, unless surgery is required as a result of the
30 | emergency within a reasonable time after the patient is
31 | stabilized, in which case the limitation provided by this

1 subsection applies to any act or omission of providing medical
2 care or treatment which occurs prior to the stabilization of
3 the patient following the surgery.

4 Section 205. Section 766.316, Florida Statutes, is
5 amended to read:

6 766.316 Notice to obstetrical patients of
7 participation in the plan.--Each hospital with a participating
8 physician on its staff and each participating physician, other
9 than residents, assistant residents, and interns deemed to be
10 participating physicians under s. 766.314(4)(c), under the
11 Florida Birth-Related Neurological Injury Compensation Plan
12 shall provide notice to the obstetrical patients as to the
13 limited no-fault alternative for birth-related neurological
14 injuries. Such notice shall be provided on forms furnished by
15 the association and shall include a clear and concise
16 explanation of a patient's rights and limitations under the
17 plan. The hospital or the participating physician may elect to
18 have the patient sign a form acknowledging receipt of the
19 notice form. Signature of the patient acknowledging receipt of
20 the notice form raises a rebuttable presumption that the
21 notice requirements of this section have been met. Notice need
22 not be given to a patient when the patient has an emergency
23 medical condition as defined in s. 395.002(8)(9)(b) or when
24 notice is not practicable.

25 Section 206. Paragraph (b) of subsection (2) of
26 section 812.014, Florida Statutes, is amended to read:

27 812.014 Theft.--

28 (2)

29 (b)1. If the property stolen is valued at \$20,000 or
30 more, but less than \$100,000;

31

1 2. The property stolen is cargo valued at less than
2 \$50,000 that has entered the stream of interstate or
3 intrastate commerce from the shipper's loading platform to the
4 consignee's receiving dock; or

5 3. The property stolen is emergency medical equipment,
6 valued at \$300 or more, that is taken from a facility licensed
7 under chapter 395 or from an aircraft or vehicle permitted
8 under chapter 401,

9
10 the offender commits grand theft in the second degree,
11 punishable as a felony of the second degree, as provided in s.
12 775.082, s. 775.083, or s. 775.084. Emergency medical
13 equipment means mechanical or electronic apparatus used to
14 provide emergency services and care as defined in s.
15 395.002(9)~~(10)~~ or to treat medical emergencies.

16 Section 207. This act shall take effect July 1, 2007.
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