

By Senator Gardiner

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1 A bill to be entitled
2 An act relating to licensure of health-care-related
3 facilities; repealing s. 395.0199, F.S., relating to
4 private utilization review in health care; amending
5 ss. 395.405 and 400.0712, F.S.; conforming cross-
6 references to changes made by the act; repealing s.
7 400.141(16), F.S., relating to a licensed facility's
8 requirement to report the number of vacant beds in its
9 facility which are available for resident occupancy;
10 amending s. 400.147, F.S.; redefining the term
11 "adverse incident"; deleting the agency's requirement
12 to submit a report to the Legislature on adverse
13 incidents occurring at nursing homes; amending s.
14 400.195, F.S.; conforming a cross-reference; amending
15 s. 400.464, F.S.; revising provisions relating to the
16 licensure of home health agencies to conform to
17 changes made by the act; amending s. 400.497, F.S.;
18 conforming a cross-reference to changes made by the
19 act; amending s. 400.506, F.S.; revising provisions
20 relating to the licensure of nurse registries to
21 conform to changes made by the act; repealing s.
22 400.509, F.S., relating to registration of particular
23 service providers that are exempt from licensure,
24 certificates of registration, and regulation of
25 registrants; amending s. 400.512, F.S.; revising
26 provisions relating to the screening of home health
27 agency personnel to conform to changes made by the
28 act; amending s. 400.9935, F.S.; revising the legal
29 responsibilities of a medical or clinic director of a

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30 health care clinic; revising the accreditation
31 requirements for a clinic that is engaged in magnetic
32 resonance imaging services; repealing s. 400.995,
33 F.S., relating to agency administrative penalties;
34 amending s. 408.803, F.S.; redefining the term "change
35 of ownership" with regard to the Health Care Licensing
36 Procedures Act; amending s. 408.806, F.S.; revising
37 the license application process; authorizing the
38 agency to provide electronic access to information or
39 documents; amending s. 408.807, F.S.; revising the
40 process to change ownership of certain health care
41 facilities; amending s. 408.808, F.S.; authorizing the
42 issuance of a provisional license to an applicant
43 submitting an application for a change of ownership;
44 amending s. 408.809, F.S.; revising the requirements
45 for the background screening of applicants; providing
46 an exception for rescreening; authorizing a person who
47 has a disqualifying offense to continue to perform his
48 or her duties under certain circumstances pending the
49 outcome of the application for exemption; amending s.
50 408.810, F.S.; revising minimum licensure
51 requirements; amending s. 408.811, F.S.; revising
52 inspection requirements; authorizing the agency to
53 require an applicant or licensee to submit a plan of
54 correction for deficiencies; amending s. 408.813,
55 F.S.; classifying violations of the Health Care
56 Licensing Procedures Act; amending s. 408.820, F.S.;
57 conforming cross-references to changes made by the
58 act; creating s. 408.821, F.S.; providing for

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59 emergency management planning; authorizing the
60 issuance of an inactive license under certain
61 circumstances; providing requirements for an inactive
62 license; authorizing the agency to establish rules
63 related to emergency management planning in
64 consultation with the Department of Community Affairs;
65 repealing s. 408.831(3) and (4), F.S., relating to the
66 denial, suspension, or revocation of a license, or
67 change of ownership; amending s. 409.901, F.S.;

68 redefining the term "change of ownership" as it
69 relates to the Medicaid program in this state;
70 repealing s. 429.071, F.S., relating to a pilot
71 program for an intergenerational respite care assisted
72 living facility; amending s. 429.08, F.S.; authorizing
73 the agency to provide certain information
74 electronically or through the agency's website to
75 referral providers, the Department of Children and
76 Family Services, and the Department of Elderly
77 Affairs; deleting the provision that required the
78 field offices of the agency to establish local
79 coordinating workgroups; amending s. 429.19, F.S.;

80 revising the classification of violations; deleting a
81 provision that requires the agency to make a
82 reasonable attempt to discuss violations and recommend
83 corrective actions to the owner or administrator of a
84 facility; authorizing the agency to provide a list of
85 sanctioned facilities electronically or through the
86 agency's Internet site; amending s. 429.23, F.S.;

87 redefining the term "adverse incident" with regard to

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88 the Assisted Living Facilities Act; deleting the
89 agency's requirement to submit a report on reports of
90 adverse incidents occurring at assisted living
91 facilities; requiring that incidents of abuse,
92 neglect, or exploitation be reported to the Department
93 of Children and Family Services; repealing s.
94 429.26(9), F.S., relating to the appropriateness of
95 admission of an individual to an assisted care
96 facility; amending s. 435.04, F.S.; authorizing
97 certain employees of nursing homes, assisted care
98 facilities, and related health care facilities to
99 submit an affidavit of compliance with regard to
100 background screening at the time of relicensure to the
101 licensing agency; amending s. 435.05, F.S.;
102 authorizing each employer that is required to conduct
103 level 2 background screening to sign an affidavit at
104 the time of relicensure; amending s. 483.031, F.S.;
105 revising provisions relating to the exemption of
106 certain clinical laboratories, to conform to changes
107 made by the act; amending s. 483.041, F.S.; defining
108 the term "waived test" as a test that the federal
109 Centers for Medicare and Medicaid Services, rather
110 than the Health Care Financing Administration, has
111 determined qualifies for a certificate of waiver;
112 repealing s. 483.106, F.S., relating to the
113 application for a certificate of exemption for certain
114 clinical laboratories; amending s. 483.172, F.S.;
115 revising a provision relating to the assessment of a
116 licensing fee for a certificate of exemption to

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117 conform to changes made by the act; amending s.
118 483.23, F.S.; revising provisions relating to offenses
119 regarding a clinical laboratory license to conform to
120 changes made by the act; providing an effective date.
121

122 Be It Enacted by the Legislature of the State of Florida:
123

124 Section 1. Section 395.0199, Florida Statutes, is repealed.

125 Section 2. Section 395.405, Florida Statutes, is amended to
126 read:

127 395.405 Rulemaking.—The department shall adopt and enforce
128 all rules necessary to administer ss. ~~395.0199~~, 395.401,
129 395.4015, 395.402, 395.4025, 395.403, 395.404, and 395.4045.

130 Section 3. Subsection (1) of section 400.0712, Florida
131 Statutes, is amended to read:

132 400.0712 Application for inactive license.—

133 (1) ~~As specified in s. 408.831(4) and this section,~~ The
134 agency may issue an inactive license to a nursing home facility
135 for all or a portion of its beds. Any request by a licensee that
136 a nursing home or portion of a nursing home become inactive must
137 be submitted to the agency in the approved format. The facility
138 may not initiate any suspension of services, notify residents,
139 or initiate inactivity before receiving approval from the
140 agency; and a licensee that violates this provision may not be
141 issued an inactive license.

142 Section 4. Subsection (16) of section 400.141, Florida
143 Statutes, is repealed.

144 Section 5. Subsections (5), (9), (10), (11), (12), (13),
145 and (14) of section 400.147, Florida Statutes, are amended to

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146 read:

147 400.147 Internal risk management and quality assurance
 148 program.—

149 (5) For purposes of reporting to the agency under this
 150 section, the term "adverse incident" means:

151 (a) An event over which facility personnel could exercise
 152 control and which is associated in whole or in part with the
 153 facility's intervention, rather than the condition for which
 154 such intervention occurred, and which results in one of the
 155 following:

156 1. Death;

157 2. Brain or spinal damage;

158 3. Permanent disfigurement;

159 4. Fracture or dislocation of bones or joints;

160 5. A limitation of neurological, physical, or sensory
 161 function;

162 6. Any condition that required medical attention to which
 163 the resident has not given his or her informed consent,
 164 including failure to honor advanced directives; ~~or~~

165 7. Any condition that required the transfer of the
 166 resident, within or outside the facility, to a unit providing a
 167 more acute level of care due to the adverse incident, rather
 168 than the resident's condition prior to the adverse incident; or

169 8. An event that is reported to a law enforcement agency or
 170 its personnel; or

171 ~~(b) Abuse, neglect, or exploitation as defined in s.~~
 172 ~~415.102;~~

173 ~~(c) Abuse, neglect and harm as defined in s. 39.01;~~

174 (b)-(d) Resident elopement, if the elopement places the

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175 resident at risk of harm or injury. ~~or~~

176 ~~(c) An event that is reported to law enforcement.~~

177 (9) Abuse, neglect, or exploitation must be reported to the
178 agency as required by 42 C.F.R. s. 483.13(c), and to the
179 Department of Children and Family Services as required by
180 chapters 39 and 415.

181 (10)~~(9)~~ By the 10th of each month, each facility subject to
182 this section shall report any notice received pursuant to s.
183 400.0233(2) and each initial complaint that was filed with the
184 clerk of the court and served on the facility during the
185 previous month by a resident or a resident's family member,
186 guardian, conservator, or personal legal representative. The
187 report must include the name of the resident, the resident's
188 date of birth and social security number, the Medicaid
189 identification number for Medicaid-eligible persons, the date or
190 dates of the incident leading to the claim or dates of
191 residency, if applicable, and the type of injury or violation of
192 rights alleged to have occurred. Each facility shall also submit
193 a copy of the notices received pursuant to s. 400.0233(2) and
194 complaints filed with the clerk of the court. This report is
195 confidential as provided by law and is not discoverable or
196 admissible in any civil or administrative action, except in such
197 actions brought by the agency to enforce the provisions of this
198 part.

199 (11)~~(10)~~ The agency shall review, as part of its licensure
200 inspection process, the internal risk management and quality
201 assurance program at each facility regulated by this section to
202 determine whether the program meets standards established in
203 statutory laws and rules, is being conducted in a manner

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204 designed to reduce adverse incidents, and is appropriately
205 reporting incidents as required by this section.

206 (12)~~(11)~~ There is no monetary liability on the part of, and
207 a cause of action for damages may not arise against, any risk
208 manager for the implementation and oversight of the internal
209 risk management and quality assurance program in a facility
210 licensed under this part as required by this section, or for any
211 act or proceeding undertaken or performed within the scope of
212 the functions of such internal risk management and quality
213 assurance program if the risk manager acts without intentional
214 fraud.

215 (13)~~(12)~~ If the agency, through its receipt of the adverse
216 incident reports prescribed in subsection (7), or through any
217 investigation, has a reasonable belief that conduct by a staff
218 member or employee of a facility is grounds for disciplinary
219 action by the appropriate regulatory board, the agency shall
220 report this fact to the regulatory board.

221 (14)~~(13)~~ The agency may adopt rules to administer this
222 section.

223 ~~(14) The agency shall annually submit to the Legislature a~~
224 ~~report on nursing home adverse incidents. The report must~~
225 ~~include the following information arranged by county:~~

226 ~~(a) The total number of adverse incidents.~~

227 ~~(b) A listing, by category, of the types of adverse~~
228 ~~incidents, the number of incidents occurring within each~~
229 ~~category, and the type of staff involved.~~

230 ~~(c) A listing, by category, of the types of injury caused~~
231 ~~and the number of injuries occurring within each category.~~

232 ~~(d) Types of liability claims filed based on an adverse~~

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233 ~~incident or reportable injury.~~

234 ~~(c) Disciplinary action taken against staff, categorized by~~
235 ~~type of staff involved.~~

236 Section 6. Paragraph (d) of subsection (1) of section
237 400.195, Florida Statutes, is amended to read:

238 400.195 Agency reporting requirements.—

239 (1) For the period beginning June 30, 2001, and ending June
240 30, 2005, the Agency for Health Care Administration shall
241 provide a report to the Governor, the President of the Senate,
242 and the Speaker of the House of Representatives with respect to
243 nursing homes. The first report shall be submitted no later than
244 December 30, 2002, and subsequent reports shall be submitted
245 every 6 months thereafter. The report shall identify facilities
246 based on their ownership characteristics, size, business
247 structure, for-profit or not-for-profit status, and any other
248 characteristics the agency determines useful in analyzing the
249 varied segments of the nursing home industry and shall report:

250 (d) Information regarding deficiencies cited, including
251 information used to develop the Nursing Home Guide WATCH LIST
252 pursuant to s. 400.191, and applicable rules, a summary of data
253 generated on nursing homes by Centers for Medicare and Medicaid
254 Services Nursing Home Quality Information Project, and
255 information collected pursuant to s. 400.147(10) ~~s. 400.147(9)~~,
256 relating to litigation.

257 Section 7. Paragraph (a) of subsection (4) of section
258 400.464, Florida Statutes, is amended to read:

259 400.464 Home health agencies to be licensed; expiration of
260 license; exemptions; unlawful acts; penalties.—

261 (4) (a) An organization that offers or advertises to the

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262 public any service for which licensure ~~or registration~~ is
263 required under this part must include in the advertisement the
264 license number ~~or registration number~~ issued to the organization
265 by the agency. The agency shall assess a fine of not less than
266 \$100 to any licensee ~~or registrant~~ who fails to include the
267 license ~~or registration~~ number when submitting the advertisement
268 for publication, broadcast, or printing. The fine for a second
269 or subsequent offense is \$500. The holder of a license issued
270 under this part may not advertise or indicate to the public that
271 it holds a home health agency or nurse registry license other
272 than the one it has been issued.

273 Section 8. Section 400.497, Florida Statutes, is amended to
274 read:

275 400.497 Rules establishing minimum standards.—The agency
276 shall adopt, publish, and enforce rules to implement part II of
277 chapter 408 and this part, including, as applicable, s. 400.506
278 ~~ss. 400.506 and 400.509~~, which must provide reasonable and fair
279 minimum standards relating to:

280 (1) The home health aide competency test and home health
281 aide training. The agency shall create the home health aide
282 competency test and establish the curriculum and instructor
283 qualifications for home health aide training. Licensed home
284 health agencies may provide this training and shall furnish
285 documentation of such training to other licensed home health
286 agencies upon request. Successful passage of the competency test
287 by home health aides may be substituted for the training
288 required under this section and any rule adopted pursuant
289 thereto.

290 (2) Shared staffing. The agency shall allow shared staffing

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291 if the home health agency is part of a retirement community that
292 provides multiple levels of care, is located on one campus, is
293 licensed under this chapter or chapter 429, and otherwise meets
294 the requirements of law and rule.

295 (3) The criteria for the frequency of onsite licensure
296 surveys.

297 (4) Licensure application and renewal.

298 (5) Oversight by the director of nursing. The agency shall
299 develop rules related to:

300 (a) Standards that address oversight responsibilities by
301 the director of nursing of skilled nursing and personal care
302 services provided by the home health agency's staff;

303 (b) Requirements for a director of nursing to provide to
304 the agency, upon request, a certified daily report of the home
305 health services provided by a specified direct employee or
306 contracted staff member on behalf of the home health agency. The
307 agency may request a certified daily report only for a period
308 not to exceed 2 years prior to the date of the request; and

309 (c) A quality assurance program for home health services
310 provided by the home health agency.

311 (6) Conditions for using a recent unannounced licensure
312 inspection for the inspection required in s. 408.806 related to
313 a licensure application associated with a change in ownership of
314 a licensed home health agency.

315 (7) The requirements for onsite and electronic
316 accessibility of supervisory personnel of home health agencies.

317 (8) Information to be included in patients' records.

318 (9) Geographic service areas.

319 (10) Preparation of a comprehensive emergency management

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320 plan pursuant to s. 400.492.

321 (a) The Agency for Health Care Administration shall adopt
322 rules establishing minimum criteria for the plan and plan
323 updates, with the concurrence of the Department of Health and in
324 consultation with the Department of Community Affairs.

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

329 (c) The plan is subject to review and approval by the
330 county health department. During its review, the county health
331 department shall contact state and local health and medical
332 stakeholders when necessary. The county health department shall
333 complete its review to ensure that the plan is in accordance
334 with the criteria in the Agency for Health Care Administration
335 rules within 90 days after receipt of the plan and shall approve
336 the plan or advise the home health agency of necessary
337 revisions. If the home health agency fails to submit a plan or
338 fails to submit the requested information or revisions to the
339 county health department within 30 days after written
340 notification from the county health department, the county
341 health department shall notify the Agency for Health Care
342 Administration. The agency shall notify the home health agency
343 that its failure constitutes a deficiency, subject to a fine of
344 \$5,000 per occurrence. If the plan is not submitted, information
345 is not provided, or revisions are not made as requested, the
346 agency may impose the fine.

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

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349 after consulting with state and local health and medical
350 stakeholders when necessary. The department shall complete its
351 review within 90 days after receipt of the plan and shall
352 approve the plan or advise the home health agency of necessary
353 revisions. The department shall make every effort to avoid
354 imposing differing requirements on a home health agency that
355 operates in more than one county as a result of differing or
356 conflicting comprehensive plan requirements of the counties in
357 which the home health agency operates.

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

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

362 2. A retirement community that consists of residential
363 units for independent living and either a licensed nursing home
364 or an assisted living facility, and has a licensed home health
365 agency used exclusively by the residents of the retirement
366 community, provided the comprehensive emergency management plan
367 for the facility or retirement community provides for continuous
368 care of all residents with special needs during an emergency.

369 Section 9. Paragraph (a) of subsection (6) of section
370 400.506, Florida Statutes, is amended to read:

371 400.506 Licensure of nurse registries; requirements;
372 penalties.—

373 (6) (a) A nurse registry may refer for contract in private
374 residences registered nurses and licensed practical nurses
375 registered and licensed under part I of chapter 464, certified
376 nursing assistants certified under part II of chapter 464, home
377 health aides who present documented proof of successful

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378 completion of the training required by rule of the agency, ~~and~~
379 ~~companions or homemakers for the purposes of providing those~~
380 ~~services authorized under s. 400.509(1)~~. A licensed nurse
381 registry shall ensure that each certified nursing assistant
382 referred for contract by the nurse registry and each home health
383 aide referred for contract by the nurse registry is adequately
384 trained to perform the tasks of a home health aide in the home
385 setting. Each person referred by a nurse registry must provide
386 current documentation that he or she is free from communicable
387 diseases.

388 Section 10. Section 400.509, Florida Statutes, is repealed.

389 Section 11. Section 400.512, Florida Statutes, is amended
390 to read:

391 400.512 Screening of home health agency personnel and
392 ~~nurse registry personnel; and companions and homemakers.~~ The
393 agency shall require employment or contractor screening as
394 provided in chapter 435, using the level 1 standards for
395 screening set forth in that chapter, for home health agency
396 personnel and persons referred for employment by nurse
397 registries; ~~and persons employed by companion or homemaker~~
398 ~~services registered under s. 400.509.~~

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

404 (b) The appropriate regulatory board within the Department
405 of Health, or that department itself when there is no board,
406 may, upon request of the licensed health care practitioner,

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407 grant exemptions from disqualification from employment or
408 contracting under this section as provided in s. 435.07.

409 (2) The administrator of each home health agency and, the
410 managing employee of each nurse registry, ~~and the managing~~
411 ~~employee of each companion or homemaker service registered under~~
412 ~~s. 400.509~~ must sign an affidavit annually, under penalty of
413 perjury, stating that all personnel hired or contracted with or
414 registered on or after October 1, 2000, who enter the home of a
415 patient or client in their service capacity have been screened.

416 (3) As a prerequisite to operating as a home health agency
417 or, nurse registry, ~~or companion or homemaker service under s.~~
418 ~~400.509~~, the administrator or managing employee, respectively,
419 must submit to the agency his or her name and any other
420 information necessary to conduct a complete screening according
421 to this section. The agency shall submit the information to the
422 Department of Law Enforcement for state processing. The agency
423 shall review the record of the administrator or manager with
424 respect to the offenses specified in this section and shall
425 notify the owner of its findings. If disposition information is
426 missing on a criminal record, the administrator or manager, upon
427 request of the agency, must obtain and supply within 30 days the
428 missing disposition information to the agency. Failure to supply
429 missing information within 30 days or to show reasonable efforts
430 to obtain such information will result in automatic
431 disqualification.

432 (4) Proof of compliance with the screening requirements of
433 chapter 435 shall be accepted in lieu of the requirements of
434 this section if the person has been continuously employed or
435 registered without a breach in service that exceeds 180 days,

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436 the proof of compliance is not more than 2 years old, and the
 437 person has been screened by the Department of Law Enforcement. A
 438 home health agency or nurse registry, ~~or companion or homemaker~~
 439 ~~service registered under s. 400.509~~ shall directly provide proof
 440 of compliance to another home health agency or nurse registry,
 441 ~~or companion or homemaker service registered under s. 400.509.~~
 442 The recipient home health agency or nurse registry, ~~or~~
 443 ~~companion or homemaker service registered under s. 400.509~~ may
 444 not accept any proof of compliance directly from the person who
 445 requires screening. Proof of compliance with the screening
 446 requirements of this section shall be provided upon request to
 447 the person screened by the home health agencies or nurse
 448 registries; ~~or companion or homemaker services registered under~~
 449 ~~s. 400.509.~~

450 (5) There is no monetary liability on the part of, and no
 451 cause of action for damages arises against, a licensed home
 452 health agency or licensed nurse registry, ~~or companion or~~
 453 ~~homemaker service registered under s. 400.509,~~ that, upon notice
 454 that the employee or contractor has been found guilty of,
 455 regardless of adjudication, or entered a plea of nolo contendere
 456 or guilty to, any offense prohibited under s. 435.03 or under
 457 any similar statute of another jurisdiction, terminates the
 458 employee or contractor, whether or not the employee or
 459 contractor has filed for an exemption with the agency in
 460 accordance with chapter 435 and whether or not the time for
 461 filing has expired.

462 (6) The costs of processing the statewide correspondence
 463 criminal records checks must be borne by the home health agency
 464 or the nurse registry; ~~or the companion or homemaker service~~

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465 ~~registered under s. 400.509~~, or by the person being screened, at
466 the discretion of the home health agency or nurse registry, ~~or~~
467 ~~s. 400.509 registrant.~~

468 Section 12. Subsections (1) and (7) of section 400.9935,
469 Florida Statutes, are amended to read:

470 400.9935 Clinic responsibilities.—

471 (1) Each clinic shall appoint a medical director or clinic
472 director who shall agree in writing to accept legal
473 responsibility for the following activities on behalf of the
474 clinic. The medical director or the clinic director shall:

475 (a) Have signs identifying the medical director or clinic
476 director posted in a conspicuous location within the clinic
477 readily visible to all patients.

478 (b) Ensure that all practitioners providing health care
479 services or supplies to patients maintain a current active and
480 unencumbered Florida license.

481 (c) Review any patient referral contracts or agreements
482 executed by the clinic.

483 (d) Ensure that all health care practitioners at the clinic
484 have active appropriate certification or licensure for the level
485 of care being provided.

486 (e) Serve as the clinic records owner as defined in s.
487 456.057.

488 (f) Ensure compliance with the recordkeeping, office
489 surgery, and adverse incident reporting requirements of chapter
490 456, the respective practice acts, and rules adopted under this
491 part and part II of chapter 408.

492 (g) Conduct systematic reviews of clinic billings to ensure
493 that the billings are not fraudulent or unlawful. Upon discovery

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494 of an unlawful charge, the medical director or clinic director
495 shall take immediate corrective action. If the clinic performs
496 only the technical component of magnetic resonance imaging,
497 static radiographs, computed tomography, or positron emission
498 tomography, and provides the professional interpretation of such
499 services, in a fixed facility that is accredited by the Joint
500 Commission on Accreditation of Healthcare Organizations or the
501 Accreditation Association for Ambulatory Health Care, and the
502 American College of Radiology; and if, in the preceding quarter,
503 the percentage of scans performed by that clinic which was
504 billed to all personal injury protection insurance carriers was
505 less than 15 percent, the chief financial officer of the clinic
506 may, in a written acknowledgment provided to the agency, assume
507 the responsibility for the conduct of the systematic reviews of
508 clinic billings to ensure that the billings are not fraudulent
509 or unlawful.

510 ~~(h) Not refer a patient to the clinic if the clinic~~
511 ~~performs magnetic resonance imaging, static radiographs,~~
512 ~~computed tomography, or positron emission tomography. The term~~
513 ~~"refer a patient" means the referral of one or more patients of~~
514 ~~the medical or clinical director or a member of the medical or~~
515 ~~clinical director's group practice to the clinic for magnetic~~
516 ~~resonance imaging, static radiographs, computed tomography, or~~
517 ~~positron emission tomography. A medical director who is found to~~
518 ~~violate this paragraph commits a felony of the third degree,~~
519 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

520 (7) (a) Each clinic engaged in magnetic resonance imaging
521 services must be accredited by the Joint Commission on
522 Accreditation of Healthcare Organizations, the American College

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523 of Radiology, or the Accreditation Association for Ambulatory
524 Health Care, within 1 year after licensure. A clinic that is
525 accredited by the American College of Radiology or is within the
526 original 1-year period after licensure and replaces its core
527 magnetic resonance imaging equipment shall be given 1 year after
528 the date on which the equipment is replaced to attain
529 accreditation. However, a clinic may request a single, 6-month
530 extension if it provides evidence to the agency establishing
531 that, for good cause shown, such clinic can not be accredited
532 within 1 year after licensure, and that such accreditation will
533 be completed within the 6-month extension. After obtaining
534 accreditation as required by this subsection, each such clinic
535 must maintain accreditation as a condition of renewal of its
536 license. A clinic that files a change-of-ownership application
537 must comply with the original accreditation time requirements of
538 the transferor. The agency shall deny a change-of-ownership
539 application if the clinic is not in compliance with the
540 accreditation requirements. If a clinic adds, replaces, or
541 modifies equipment for magnetic resonance imaging and the
542 accrediting agency requires new accreditation, the clinic must
543 be accredited within 1 year after the addition, replacement, or
544 modification, but may request a single 6-month extension if it
545 provides evidence of good cause to the agency.

546 (b) The agency may deny the application or revoke the
547 license of any entity formed for the purpose of avoiding
548 compliance with the accreditation provisions of this subsection
549 and whose principals were previously principals of an entity
550 that was unable to meet the accreditation requirements within
551 the specified timeframes. The agency may adopt rules as to the

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552 accreditation of magnetic resonance imaging clinics.

553 Section 13. Subsection (6) of section 400.995, Florida
554 Statutes, is repealed.

555 Section 14. Subsections (5) and (9) of section 408.803,
556 Florida Statutes, are amended to read:

557 408.803 Definitions.—As used in this part, the term:

558 (5) "Change of ownership" means:

559 (a) An event in which the licensee sells or otherwise
560 transfers its ownership changes to a different individual or
561 other legal entity;

562 (b) An event in which an individual or other entity
563 purchases, or in good faith intends to purchase, the licensed
564 provider; or

565 (c) An event in which 51 45 percent or more of the
566 ownership, voting shares, membership, or controlling interest of
567 a licensee is in any manner transferred or otherwise assigned.

568 This paragraph does not apply to a licensee that is publicly
569 traded on a recognized stock exchange in a corporation whose
570 shares are not publicly traded on a recognized stock exchange is
571 transferred or assigned, including the final transfer or
572 assignment of multiple transfers or assignments over a 2-year
573 period that cumulatively total 45 percent or greater. A change
574 solely in the management company or board of directors is not a
575 change of ownership.

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

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581 Section 15. Paragraph (a) of subsection (1), subsection
582 (2), paragraph (c) of subsection (7), and subsection (8) of
583 section 408.806, Florida Statutes, are amended to read:

584 408.806 License application process.—

585 (1) An application for licensure must be made to the agency
586 on forms furnished by the agency, submitted under oath, and
587 accompanied by the appropriate fee in order to be accepted and
588 considered timely. The application must contain information
589 required by authorizing statutes and applicable rules and must
590 include:

591 (a) The name, address, and social security number of:

592 1. The applicant;

593 2. The administrator or a similarly titled person who is
594 responsible for the day-to-day operation of the provider;

595 3. The financial officer or similarly titled person who is
596 responsible for the financial operation of the provider; and

597 4. Each controlling interest if the applicant or
598 controlling interest is an individual.

599 (2) (a) The applicant for a renewal license must submit an
600 application that must be received by the agency at least 60
601 days, but not more than 120 days, before ~~prior to~~ the expiration
602 of the current license. An application received 120 days or more
603 before the expiration date shall be returned to the applicant.

604 If the renewal application and fee are received before ~~prior to~~
605 the license expiration date, the license shall not be deemed to
606 have expired if the license expiration date occurs during the
607 agency's review of the renewal application.

608 (b) The applicant for initial licensure due to a change of
609 ownership must submit an application that must be received by

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610 the agency at least 60 days before ~~prior to~~ the date of change
611 of ownership.

612 (c) For any other application or request, the applicant
613 must submit an application or request that must be received by
614 the agency at least 60 days before ~~prior to~~ the requested
615 effective date, unless otherwise specified in authorizing
616 statutes or applicable rules. An application received more than
617 120 days before the requested effective date shall be returned
618 to the applicant.

619 (d) The agency shall notify the licensee by mail or
620 electronically at least 90 days before ~~prior to~~ the expiration
621 of a license that a renewal license is necessary to continue
622 operation. The failure to timely submit a renewal application
623 and license fee shall result in a \$50 per day late fee charged
624 to the licensee by the agency; however, the aggregate amount of
625 the late fee may not exceed 50 percent of the licensure fee or
626 \$500, whichever is less. If an application is received after the
627 required filing date and exhibits a hand-canceled postmark
628 obtained from a United States post office dated on or before the
629 required filing date, no fine will be levied.

630 (7)

631 (c) If an inspection is required by the authorizing statute
632 for a license application other than an initial application, the
633 inspection must be unannounced. This paragraph does not apply to
634 inspections required pursuant to ss. 383.324, 395.0161(4),
635 429.67(6), and 483.061(2).

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

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- 639 (a) Licensure applications.
640 (b) Required signatures.
641 (c) Payment of fees.
642 (d) Notarization of applications.

643

644 Requirements for electronic submission of any documents required
645 by this part or authorizing statutes may be established by rule.
646 As an alternative to sending documents as required by
647 authorizing statutes, the agency may provide electronic access
648 to information or documents.

649 Section 16. Subsection (2) of section 408.807, Florida
650 Statutes, is amended to read:

651 408.807 Change of ownership.—Whenever a change of ownership
652 occurs:

653 (2) The transferee shall make application to the agency for
654 a license within the timeframes required in s. 408.806. The
655 effective date of the transfer must be submitted with the
656 application. The effective date of licensure may not occur
657 before the date of application. Final closing documents must be
658 provided within 10 calendar days after the effective date of the
659 transfer.

660 Section 17. Subsection (2) of section 408.808, Florida
661 Statutes, is amended to read:

662 408.808 License categories.—

663 (2) PROVISIONAL LICENSE.—A provisional license may be
664 issued to an applicant pursuant to s. 408.809(3). An applicant
665 against whom a proceeding denying or revoking a license is
666 pending at the time of license renewal may be issued a
667 provisional license effective until final action not subject to

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668 further appeal. A provisional license may also be issued to an
669 applicant submitting an application for a change of ownership. A
670 provisional license shall be limited in duration to a specific
671 period that may not exceed 6 months, as determined by the
672 agency.

673 Section 18. Subsection (5) of section 408.809, Florida
674 Statutes, is amended, and subsection (6) is added to that
675 section, to read:

676 408.809 Background screening; prohibited offenses.—

677 (5) Notwithstanding the requirement in s. 435.04(5), in
678 order to submit annually, the attestations required in ss.
679 435.04(5) and 435.05(3) must be submitted at the time of license
680 renewal. ~~Background screening is not required to obtain a~~
681 ~~certificate of exemption issued under s. 483.106.~~

682 (6) Effective October 1, 2009, in addition to the offenses
683 listed in ss. 435.03 and 435.04, all persons required to undergo
684 background screening pursuant to this part or authorizing
685 statutes must not have been found guilty of, regardless of
686 adjudication, or entered a plea of nolo contendere or guilty to,
687 any offense prohibited under any of the following provisions of
688 law or any similar statute of another jurisdiction:

689 (a) Any authorizing statute, if the offense was a felony.

690 (b) This chapter, if the offense was a felony.

691 (c) Section 409.920, relating to Medicaid-provider fraud,
692 if the offense was a felony.

693 (d) Section 409.9201, relating to Medicaid fraud, if the
694 offense was a felony.

695 (e) Section 741.28, relating to domestic violence.

696 (f) Chapter 784, relating to assault, battery, and culpable

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697 negligence, if the offense was a felony.

698 (g) Section 810.02, relating to burglary.

699 (h) Section 817.034, relating to fraudulent acts through
700 mail, wire, radio, electromagnetic, photoelectronic, or
701 photooptical systems.

702 (i) Section 817.234, relating to false and fraudulent
703 insurance claims.

704 (j) Section 817.505, relating to patient brokering.

705 (k) Section 817.568, relating to personal identification
706 theft.

707 (l) Section 817.60, relating to theft and obtaining credit
708 cards through fraudulent means.

709 (m) Section 817.61, relating to fraudulent use of credit
710 cards if the offense was a felony.

711 (n) Section 831.01, relating to forgery.

712 (o) Section 831.02, relating to uttering forged
713 instruments.

714 (p) Section 831.07, relating to forging bank bills, checks,
715 drafts, or promissory notes.

716 (q) Section 831.09, relating to uttering forged bills,
717 checks, drafts, or notes.

718 (r) Section 831.30, relating to fraud in obtaining
719 medicinal drugs.

720 (s) Section 831.31, relating to the sale, manufacture,
721 delivery, or possession with the intent to sell any counterfeit
722 controlled substance, if the offense was a felony.

723

724 A person employed or affiliated with a licensee on or before
725 September 30, 2009, shall not be required by law to submit to

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726 rescreening if that licensee has in its possession written
727 evidence that the person has been screened and qualified
728 according to s. 435.03 or s. 435.04. However, if such person has
729 a disqualifying offense listed in this section, he or she may
730 apply for an exemption from the appropriate licensing agency
731 before September 30, 2009, and if agreed to by the employer, may
732 continue to perform his or her duties until the licensing agency
733 renders a decision on the application for exemption for offenses
734 listed in this section. Exemptions from disqualification may be
735 granted pursuant to s. 435.07.

736 Section 19. Subsection (3) of section 408.810, Florida
737 Statutes, is amended to read:

738 408.810 Minimum licensure requirements.—In addition to the
739 licensure requirements specified in this part, authorizing
740 statutes, and applicable rules, each applicant and licensee must
741 comply with the requirements of this section in order to obtain
742 and maintain a license.

743 (3) Unless otherwise specified in this part, authorizing
744 statutes, or applicable rules, any information required to be
745 reported to the agency must be submitted within 21 calendar days
746 after the report period or effective date of the information
747 whichever occurs earlier, including, but not limited to, any
748 change of:

749 (a) Information contained in the most recent application
750 for licensure; and

751 (b) Required insurance or bonds.

752 Section 20. Section 408.811, Florida Statutes, is amended,
753 to read:

754 408.811 Right of inspection; copies; inspection reports;

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755 plan for correction of deficiencies.—

756 (1) An authorized officer or employee of the agency may
757 make or cause to be made any inspection or investigation deemed
758 necessary by the agency to determine the state of compliance
759 with this part, authorizing statutes, and applicable rules. The
760 right of inspection extends to any business that the agency has
761 reason to believe is being operated as a provider without a
762 license, but inspection of any business suspected of being
763 operated without the appropriate license may not be made without
764 the permission of the owner or person in charge unless a warrant
765 is first obtained from a circuit court. Any application for a
766 license issued under this part, authorizing statutes, or
767 applicable rules constitutes permission for an appropriate
768 inspection to verify the information submitted on or in
769 connection with the application.

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

772 (b) Inspections for relicensure shall be conducted
773 biennially unless otherwise specified by authorizing statutes or
774 applicable rules.

775 (2) Inspections conducted in conjunction with
776 certification, comparable licensure requirements, or a
777 recognized or approved accreditation organization may be
778 accepted in lieu of a complete licensure inspection. However, a
779 licensure inspection may also be conducted to review any
780 licensure requirements that are not also requirements for
781 certification.

782 (3) The agency shall have access to and the licensee shall
783 provide, or if requested send, copies of all provider records

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784 required during an inspection or other review at no cost to the
785 agency, including records requested during an off-site review.

786 (4) (a) Each licensee shall maintain as public information,
787 available upon request, records of all inspection reports
788 pertaining to that provider that have been filed by the agency
789 unless those reports are exempt from or contain information that
790 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
791 Constitution or is otherwise made confidential by law. Effective
792 October 1, 2006, copies of such reports shall be retained in the
793 records of the provider for at least 3 years following the date
794 the reports are filed and issued, regardless of a change of
795 ownership.

796 (b) A licensee shall, upon the request of any person who
797 has completed a written application with intent to be admitted
798 by such provider, any person who is a client of such provider,
799 or any relative, spouse, or guardian of any such person, furnish
800 to the requester a copy of the last inspection report pertaining
801 to the licensed provider that was issued by the agency or by an
802 accrediting organization if such report is used in lieu of a
803 licensure inspection.

804 (5) Deficiencies must be corrected within 30 calendar days
805 after the last day of an inspection or unless an alternative
806 timeframe is required or approved by the agency.

807 (6) The agency may require an applicant or licensee to
808 submit a plan of correction for deficiencies. If required, the
809 plan of correction must be filed with the agency within 10
810 calendar days after notification unless an alternative timeframe
811 is required.

812 Section 21. Section 408.813, Florida Statutes, is amended

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813 to read:

814 408.813 Administrative fines; violations.—As a penalty for
815 any violation of this part, authorizing statutes, or applicable
816 rules, the agency may impose an administrative fine.

817 (1) Unless the amount or aggregate limitation of the fine
818 is prescribed by authorizing statutes or applicable rules, the
819 agency may establish criteria by rule for the amount or
820 aggregate limitation of administrative fines applicable to this
821 part, authorizing statutes, and applicable rules. Each day of
822 violation constitutes a separate violation and is subject to a
823 separate fine. For fines imposed by final order of the agency
824 and not subject to further appeal, the violator shall pay the
825 fine plus interest at the rate specified in s. 55.03 for each
826 day beyond the date set by the agency for payment of the fine.

827 (2) Violations of this part, authorizing statutes, or
828 applicable rules, shall be classified according to the nature of
829 the violation and the gravity of its probable effect on clients.
830 The scope may be cited as isolated, patterned, or widespread. An
831 isolated deficiency is a deficiency affecting one or a very
832 limited number of clients, or involving one or a very limited
833 number of staff, or a situation that occurred only occasionally
834 or in a very limited number of locations. A patterned deficiency
835 is a deficiency where more than a very limited number of clients
836 are affected, or more than a very limited number of staff are
837 involved, or the situation has occurred in several locations, or
838 the same client or clients have been affected by repeated
839 occurrences of the same deficient practice but the effect of the
840 deficient practice is not found to be pervasive throughout the
841 provider's facility. A widespread deficiency is a deficiency in

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842 which the problems causing the deficiency are pervasive in the
843 provider's facility or represent systemic failure that has
844 affected or has the potential to affect a large portion of the
845 provider's clients. The definitions of classification in this
846 section control over conflicting definitions in authorizing
847 statutes. This section does not affect the legislative
848 determination of fine amounts in authorizing statutes.

849 Violations shall be classified on the written notice as follows:

850 (a) A class I violation is a condition or occurrence
851 related to the operation and maintenance of a provider's
852 facility or to the care of clients which the agency determines
853 presents an imminent danger to the clients of the provider or a
854 substantial probability that death or serious physical or
855 emotional harm would result therefrom. The condition or practice
856 constituting a class I violation shall be abated or eliminated
857 within 24 hours, unless a fixed period, as determined by the
858 agency, is required for correction. The agency shall impose an
859 administrative fine for a cited class I violation in an amount
860 determined by law. A fine shall be levied notwithstanding the
861 correction of the violation.

862 (b) A class II violation is a condition or occurrence
863 related to the operation and maintenance of a provider's
864 facility or to the care of clients which the agency determines
865 directly threatens the physical or emotional health, safety, or
866 security of the clients, other than a class I violation. The
867 agency shall impose an administrative fine for a cited class II
868 violation in an amount determined by law. A fine shall be levied
869 notwithstanding the correction of the violation.

870 (c) A class III violation is a condition or occurrence

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871 related to the operation and maintenance of a provider's
872 facility or to the care of clients which the agency determines
873 indirectly or potentially threatens the physical or emotional
874 health, safety, or security of clients, other than a class I
875 violation or a class II violation. The agency shall impose an
876 administrative fine for a cited class III violation in an amount
877 determined by law. A citation for a class III violation must
878 specify the time within which the violation is required to be
879 corrected. If a class III violation is corrected within the time
880 specified, a fine shall not be imposed.

881 (d) A class IV violation is a condition or occurrence
882 related to the operation and maintenance of a provider's
883 facility or to required reports, forms, or documents which does
884 not have the potential of negatively affecting clients. This
885 violation is of a type that the agency determines does not
886 threaten the health, safety, or security of clients. The agency
887 shall impose an administrative fine for a cited class IV
888 violation in an amount determined by law. A citation for a class
889 IV violation must specify the time within which the violation is
890 required to be corrected. If a class IV violation is corrected
891 within the time specified, a fine shall not be imposed.

892 Section 22. Subsections (12), (21), and (26) of section
893 408.820, Florida Statutes, are amended to read:

894 408.820 Exemptions.—Except as prescribed in authorizing
895 statutes, the following exemptions shall apply to specified
896 requirements of this part:

897 (12) Health care risk managers, as provided under part I of
898 chapter 395, are exempt from ss. 408.806(7), 408.810(4)-(10)
899 ~~408.810~~, and 408.811.

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900 (21) Transitional living facilities, as provided under part
901 V of chapter 400, are exempt from s. 408.810(10) ~~s. 408.810(7)-~~
902 ~~(10)~~.

903 (26) Health care clinics, as provided under part X of
904 chapter 400, are exempt from s. 408.810(6), (7), and (10) ~~ss.~~
905 ~~408.809 and 408.810(1), (6), (7), and (10)~~.

906 Section 23. Section 408.821, Florida Statutes, is created
907 to read:

908 408.821 Emergency management planning; emergency
909 operations; inactive license.-

910 (1) A licensee who is required by authorizing statutes to
911 have an emergency operations plan must designate a liaison
912 officer to serve as primary contact related to emergency
913 operations.

914 (2) An entity subject to this part may temporarily exceed
915 its licensed capacity to act as a receiving provider in
916 accordance with an approved emergency operations plan for up to
917 15 days. While in an overcapacity status, each provider shall
918 furnish or arrange for appropriate care and services to all
919 clients. In addition, the agency may approve a request for
920 overcapacity in excess of 15 days, and this approved request may
921 be based upon satisfactory justification and need as provided by
922 the receiving and sending providers.

923 (3) (a) An inactive license may be issued to a licensee
924 subject to this part when the provider is located in a
925 geographic area where a state of emergency was declared by the
926 Governor if the provider:

927 1. Suffered damage to its operation during that state of
928 emergency.

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929 2. Is currently licensed.

930 3. Does not have a provisional license.

931 4. Will be temporarily unable to provide services but is
932 reasonably expected to resume services within 12 months.

933 (b) An inactive license may be issued for a period not to
934 exceed 12 months, but may be renewed by the agency for up to 12
935 additional months upon demonstration to the agency of progress
936 toward reopening. A request by a licensee for an inactive
937 license or to extend the previously approved inactive period
938 must be submitted in writing to the agency, accompanied by
939 written justification for the inactive license which states the
940 beginning and ending dates of inactivity and includes a plan for
941 the transfer of any clients to other providers and appropriate
942 licensure fees. Upon agency approval, the licensee shall notify
943 clients of any necessary discharge or transfer as required by
944 authorizing statutes or applicable rules. The beginning of the
945 inactive licensing period shall be the date the provider ceases
946 operations. The end of the inactive period shall become the
947 licensee expiration date, and all licensure fees must be
948 current, paid in full, and may be prorated. Reactivation of an
949 inactive license requires the prior approval by the agency of a
950 renewal application, including payment of licensure fees and
951 agency inspections indicating compliance with all requirements
952 of this part and applicable rules and statutes.

953 (4) The agency may establish rules related to emergency
954 management planning, communications, and operations in
955 consultation with the Department of Community Affairs. A
956 licensee providing residential or inpatient services shall use
957 an online database approved by the agency to report information

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958 to the agency regarding the provider emergency status, planning,
959 or operations.

960 Section 24. Subsections (3) and (4) of section 408.831,
961 Florida Statutes, are repealed.

962 Section 25. Subsection (5) of section 409.901, Florida
963 Statutes, is amended to read:

964 409.901 Definitions; ss. 409.901-409.920.—As used in ss.
965 409.901-409.920, except as otherwise specifically provided, the
966 term:

967 (5) "Change of ownership" means:

968 (a) An event in which the ownership of the provider changes
969 or intends to change to a different individual or other entity;

970 (b) An event in which the provider changes to a different
971 legal entity or in which ~~51~~ 45 percent or more of the ownership,
972 ~~voting~~ shares, membership, or controlling interest of the
973 provider is in any manner transferred or otherwise assigned.

974 This paragraph does not apply to a licensee that is publicly
975 traded on a recognized stock exchange; or

976 (c) Any event considered a change of ownership for
977 licensure as defined in s. 408.803 if the provider is licensed
978 or registered by the agency ~~in a corporation whose shares are~~
979 ~~not publicly traded on a recognized stock exchange is~~
980 ~~transferred or assigned, including the final transfer or~~
981 ~~assignment of multiple transfers or assignments over a 2-year~~
982 ~~period that cumulatively total 45 percent or more.~~

983
984 A change solely in the management company or board of directors
985 is not a change of ownership.

986 Section 26. Section 429.071, Florida Statutes, is repealed.

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987 Section 27. Section 429.08, Florida Statutes, is amended to
988 read:

989 429.08 Unlicensed facilities; referral of person for
990 residency to unlicensed facility; penalties; verification of
991 licensure status.—

992 (1) (a) This section applies to the unlicensed operation of
993 an assisted living facility in addition to the requirements of
994 part II of chapter 408.

995 (b) Except as provided under paragraph (d), any person who
996 owns, operates, or maintains an unlicensed assisted living
997 facility commits a felony of the third degree, punishable as
998 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
999 continued operation is a separate offense.

1000 (c) Any person found guilty of violating paragraph (a) a
1001 second or subsequent time commits a felony of the second degree,
1002 punishable as provided under s. 775.082, s. 775.083, or s.
1003 775.084. Each day of continued operation is a separate offense.

1004 (d) Any person who owns, operates, or maintains an
1005 unlicensed assisted living facility due to a change in this part
1006 or a modification in rule within 6 months after the effective
1007 date of such change and who, within 10 working days after
1008 receiving notification from the agency, fails to cease operation
1009 or apply for a license under this part commits a felony of the
1010 third degree, punishable as provided in s. 775.082, s. 775.083,
1011 or s. 775.084. Each day of continued operation is a separate
1012 offense.

1013 (e) The agency shall provide to the department's elder
1014 information and referral providers a list, by county, of
1015 licensed assisted living facilities, to assist persons who are

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1016 considering an assisted living facility placement in locating a
1017 licensed facility. This information may be provided
1018 electronically or through the agency's Internet website.

1019 ~~(2) Each field office of the Agency for Health Care~~
1020 ~~Administration shall establish a local coordinating workgroup~~
1021 ~~which includes representatives of local law enforcement~~
1022 ~~agencies, state attorneys, the Medicaid Fraud Control Unit of~~
1023 ~~the Department of Legal Affairs, local fire authorities, the~~
1024 ~~Department of Children and Family Services, the district long-~~
1025 ~~term care ombudsman council, and the district human rights~~
1026 ~~advocacy committee to assist in identifying the operation of~~
1027 ~~unlicensed facilities and to develop and implement a plan to~~
1028 ~~ensure effective enforcement of state laws relating to such~~
1029 ~~facilities. The workgroup shall report its findings, actions,~~
1030 ~~and recommendations semiannually to the Director of Health~~
1031 ~~Quality Assurance of the agency.~~

1032 (2)~~(3)~~ It is unlawful to knowingly refer a person for
1033 residency to an unlicensed assisted living facility; to an
1034 assisted living facility the license of which is under denial or
1035 has been suspended or revoked; or to an assisted living facility
1036 that has a moratorium pursuant to part II of chapter 408. Any
1037 person who violates this subsection commits a noncriminal
1038 violation, punishable by a fine not exceeding \$500 as provided
1039 in s. 775.083.

1040 (a) Any health care practitioner, as defined in s. 456.001,
1041 who is aware of the operation of an unlicensed facility shall
1042 report that facility to the agency. Failure to report a facility
1043 that the practitioner knows or has reasonable cause to suspect
1044 is unlicensed shall be reported to the practitioner's licensing

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1045 board.

1046 (b) Any hospital or community mental health center licensed
1047 under chapter 395 or chapter 394 which knowingly discharges a
1048 patient or client to an unlicensed facility is subject to
1049 sanction by the agency.

1050 (c) Any employee of the agency or department, or the
1051 Department of Children and Family Services, who knowingly refers
1052 a person for residency to an unlicensed facility; to a facility
1053 the license of which is under denial or has been suspended or
1054 revoked; or to a facility that has a moratorium pursuant to part
1055 II of chapter 408 is subject to disciplinary action by the
1056 agency or department, or the Department of Children and Family
1057 Services.

1058 (d) The employer of any person who is under contract with
1059 the agency or department, or the Department of Children and
1060 Family Services, and who knowingly refers a person for residency
1061 to an unlicensed facility; to a facility the license of which is
1062 under denial or has been suspended or revoked; or to a facility
1063 that has a moratorium pursuant to part II of chapter 408 shall
1064 be fined and required to prepare a corrective action plan
1065 designed to prevent such referrals.

1066 (e) The agency shall provide the department and the
1067 Department of Children and Family Services with a list of
1068 licensed facilities within each county and shall update the list
1069 at least quarterly. This information may be provided
1070 electronically or through the agency's Internet website.

1071 (f) At least annually, the agency shall notify, in
1072 appropriate trade publications, physicians licensed under
1073 chapter 458 or chapter 459, hospitals licensed under chapter

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1074 395, nursing home facilities licensed under part II of chapter
1075 400, and employees of the agency or the department, or the
1076 Department of Children and Family Services, who are responsible
1077 for referring persons for residency, that it is unlawful to
1078 knowingly refer a person for residency to an unlicensed assisted
1079 living facility and shall notify them of the penalty for
1080 violating such prohibition. The department and the Department of
1081 Children and Family Services shall, in turn, notify service
1082 providers under contract to the respective departments who have
1083 responsibility for resident referrals to facilities. Further,
1084 the notice must direct each noticed facility and individual to
1085 contact the appropriate agency office in order to verify the
1086 licensure status of any facility before ~~prior to~~ referring any
1087 person for residency. Each notice must include the name,
1088 telephone number, and mailing address of the appropriate office
1089 to contact.

1090 Section 28. Section 429.19, Florida Statutes, is amended to
1091 read:

1092 429.19 Violations; imposition of administrative fines;
1093 grounds.—

1094 (1) In addition to the requirements of part II of chapter
1095 408, the agency shall impose an administrative fine in the
1096 manner provided in chapter 120 for the violation of any
1097 provision of this part, part II of chapter 408, and applicable
1098 rules by an assisted living facility, for the actions of any
1099 person subject to level 2 background screening under s. 408.809,
1100 for the actions of any facility employee, or for an intentional
1101 or negligent act seriously affecting the health, safety, or
1102 welfare of a resident of the facility.

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1103 (2) Each violation of this part and adopted rules shall be
1104 classified according to the nature of the violation and the
1105 gravity of its probable effect on facility residents. The agency
1106 shall indicate the classification on the written notice of the
1107 violation as follows:

1108 (a) A class "I" violation is defined in s. 408.813.
1109 ~~violations are those conditions or occurrences related to the~~
1110 ~~operation and maintenance of a facility or to the personal care~~
1111 ~~of residents which the agency determines present an imminent~~
1112 ~~danger to the residents or guests of the facility or a~~
1113 ~~substantial probability that death or serious physical or~~
1114 ~~emotional harm would result therefrom. The condition or practice~~
1115 ~~constituting a class I violation shall be abated or eliminated~~
1116 ~~within 24 hours, unless a fixed period, as determined by the~~
1117 ~~agency, is required for correction.~~ The agency shall impose an
1118 administrative fine for a cited class I violation in an amount
1119 not less than \$5,000 and not exceeding \$10,000 for each
1120 violation. ~~A fine may be levied notwithstanding the correction~~
1121 ~~of the violation.~~

1122 (b) A class "II" violation is defined in s. 408.813.
1123 ~~violations are those conditions or occurrences related to the~~
1124 ~~operation and maintenance of a facility or to the personal care~~
1125 ~~of residents which the agency determines directly threaten the~~
1126 ~~physical or emotional health, safety, or security of the~~
1127 ~~facility residents, other than class I violations.~~ The agency
1128 shall impose an administrative fine for a cited class II
1129 violation in an amount not less than \$1,000 and not exceeding
1130 \$5,000 for each violation. ~~A fine shall be levied~~
1131 ~~notwithstanding the correction of the violation.~~

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1132 (c) A class "III" violation is defined in s. 408.813.
1133 ~~violations are those conditions or occurrences related to the~~
1134 ~~operation and maintenance of a facility or to the personal care~~
1135 ~~of residents which the agency determines indirectly or~~
1136 ~~potentially threaten the physical or emotional health, safety,~~
1137 ~~or security of facility residents, other than class I or class~~
1138 ~~II violations.~~ The agency shall impose an administrative fine
1139 for a cited class III violation in an amount not less than \$500
1140 and not exceeding \$1,000 for each violation. ~~A citation for a~~
1141 ~~class III violation must specify the time within which the~~
1142 ~~violation is required to be corrected. If a class III violation~~
1143 ~~is corrected within the time specified, no fine may be imposed,~~
1144 ~~unless it is a repeated offense.~~

1145 (d) A class "IV" violation is defined in 408.813.
1146 ~~violations are those conditions or occurrences related to the~~
1147 ~~operation and maintenance of a building or to required reports,~~
1148 ~~forms, or documents that do not have the potential of negatively~~
1149 ~~affecting residents. These violations are of a type that the~~
1150 ~~agency determines do not threaten the health, safety, or~~
1151 ~~security of residents of the facility.~~ The agency shall impose
1152 an administrative fine for a cited class IV violation in an
1153 amount not less than \$100 and not exceeding \$200 for each
1154 violation. ~~A citation for a class IV violation must specify the~~
1155 ~~time within which the violation is required to be corrected. If~~
1156 ~~a class IV violation is corrected within the time specified, no~~
1157 ~~fine shall be imposed.~~ Any class IV violation that is corrected
1158 during the time an agency survey is being conducted will be
1159 identified as an agency finding and not as a violation.

1160 (3) For purposes of this section, in determining if a

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1161 penalty is to be imposed and in fixing the amount of the fine,
1162 the agency shall consider the following factors:

1163 (a) The gravity of the violation, including the probability
1164 that death or serious physical or emotional harm to a resident
1165 will result or has resulted, the severity of the action or
1166 potential harm, and the extent to which the provisions of the
1167 applicable laws or rules were violated.

1168 (b) Actions taken by the owner or administrator to correct
1169 violations.

1170 (c) Any previous violations.

1171 (d) The financial benefit to the facility of committing or
1172 continuing the violation.

1173 (e) The licensed capacity of the facility.

1174 (4) Each day of continuing violation after the date fixed
1175 for termination of the violation, as ordered by the agency,
1176 constitutes an additional, separate, and distinct violation.

1177 (5) Any action taken to correct a violation shall be
1178 documented in writing by the owner or administrator of the
1179 facility and verified through followup visits by agency
1180 personnel. The agency may impose a fine and, in the case of an
1181 owner-operated facility, revoke or deny a facility's license
1182 when a facility administrator fraudulently misrepresents action
1183 taken to correct a violation.

1184 (6) Any facility whose owner fails to apply for a change-
1185 of-ownership license in accordance with part II of chapter 408
1186 and operates the facility under the new ownership is subject to
1187 a fine of \$5,000.

1188 (7) In addition to any administrative fines imposed, the
1189 agency may assess a survey fee, equal to the lesser of one half

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1190 of the facility's biennial license and bed fee or \$500, to cover
1191 the cost of conducting initial complaint investigations that
1192 result in the finding of a violation that was the subject of the
1193 complaint or monitoring visits conducted under s. 429.28(3)(c)
1194 to verify the correction of the violations.

1195 ~~(8) The agency, as an alternative to or in conjunction with~~
1196 ~~an administrative action against a facility for violations of~~
1197 ~~this part and adopted rules, shall make a reasonable attempt to~~
1198 ~~discuss each violation and recommended corrective action with~~
1199 ~~the owner or administrator of the facility, prior to written~~
1200 ~~notification. The agency, instead of fixing a period within~~
1201 ~~which the facility shall enter into compliance with standards,~~
1202 ~~may request a plan of corrective action from the facility which~~
1203 ~~demonstrates a good faith effort to remedy each violation by a~~
1204 ~~specific date, subject to the approval of the agency.~~

1205 (8) ~~(9)~~ The agency shall develop and disseminate an annual
1206 list of all facilities sanctioned or fined \$5,000 or more for
1207 violations of state standards, the number and class of
1208 violations involved, the penalties imposed, and the current
1209 status of cases. The list shall be disseminated, at no charge,
1210 to the Department of Elderly Affairs, the Department of Health,
1211 the Department of Children and Family Services, the Agency for
1212 Persons with Disabilities, the area agencies on aging, the
1213 Florida Statewide Advocacy Council, and the state and local
1214 ombudsman councils. The Department of Children and Family
1215 Services shall disseminate the list to service providers under
1216 contract to the department who are responsible for referring
1217 persons to a facility for residency. The agency may charge a fee
1218 commensurate with the cost of printing and postage to other

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1219 interested parties requesting a copy of this list. This
1220 information may be provided electronically or through the
1221 agency's Internet site.

1222 Section 29. Subsections (2) and (6) of section 429.23,
1223 Florida Statutes, are amended to read:

1224 429.23 Internal risk management and quality assurance
1225 program; adverse incidents and reporting requirements.—

1226 (2) Every facility licensed under this part is required to
1227 maintain adverse incident reports. For purposes of this section,
1228 the term, "adverse incident" means:

1229 (a) An event over which facility personnel could exercise
1230 control rather than as a result of the resident's condition and
1231 results in:

1232 1. Death;

1233 2. Brain or spinal damage;

1234 3. Permanent disfigurement;

1235 4. Fracture or dislocation of bones or joints;

1236 5. Any condition that required medical attention to which
1237 the resident has not given his or her consent, including failure
1238 to honor advanced directives;

1239 6. Any condition that requires the transfer of the resident
1240 from the facility to a unit providing more acute care due to the
1241 incident rather than the resident's condition before the
1242 incident; or—

1243 7. An event that is reported to a law enforcement agency or
1244 its personnel.

1245 (b) Resident elopement, if the elopement places the
1246 resident at risk of harm or injury ~~Abuse, neglect, or~~
1247 ~~exploitation as defined in s. 415.102;~~

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- 1248 ~~(c) Events reported to law enforcement; or~~
- 1249 ~~(d) Elopement.~~
- 1250 (6) Any incident of abuse, neglect, or exploitation must be
- 1251 reported to the Department of Children and Family Services as
- 1252 required by chapter 415. The agency shall annually submit to the
- 1253 Legislature a report on assisted living facility adverse
- 1254 incident reports. The report must include the following
- 1255 information arranged by county:
- 1256 ~~(a) A total number of adverse incidents;~~
- 1257 ~~(b) A listing, by category, of the type of adverse~~
- 1258 ~~incidents occurring within each category and the type of staff~~
- 1259 ~~involved;~~
- 1260 ~~(c) A listing, by category, of the types of injuries, if~~
- 1261 ~~any, and the number of injuries occurring within each category;~~
- 1262 ~~(d) Types of liability claims filed based on an adverse~~
- 1263 ~~incident report or reportable injury; and~~
- 1264 ~~(e) Disciplinary action taken against staff, categorized by~~
- 1265 ~~the type of staff involved.~~

1266 Section 30. Subsection (9) of section 429.26, Florida

1267 Statutes, is repealed.

1268 Section 31. Subsection (5) of section 435.04, Florida

1269 Statutes, is amended to read:

1270 435.04 Level 2 screening standards.—

1271 (5) Under penalty of perjury, all employees in such

1272 positions of trust or responsibility shall attest to meeting the

1273 requirements for qualifying for employment and agreeing to

1274 inform the employer immediately if convicted of any of the

1275 disqualifying offenses while employed by the employer. Each

1276 employer of employees in such positions of trust or

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1277 responsibilities which is licensed or registered by a state
1278 agency shall submit to the licensing agency annually or at the
1279 time of relicensure, under penalty of perjury, an affidavit of
1280 compliance with the provisions of this section.

1281 Section 32. Subsection (3) of section 435.05, Florida
1282 Statutes, is amended to read:

1283 435.05 Requirements for covered employees.—Except as
1284 otherwise provided by law, the following requirements shall
1285 apply to covered employees:

1286 (3) Each employer required to conduct level 2 background
1287 screening must sign an affidavit annually or at the time of
1288 relicensure, under penalty of perjury, stating that all covered
1289 employees have been screened or are newly hired and are awaiting
1290 the results of the required screening checks.

1291 Section 33. Subsection (2) of section 483.031, Florida
1292 Statutes, is amended to read:

1293 483.031 Application of part; exemptions.—This part applies
1294 to all clinical laboratories within this state, except:

1295 (2) A clinical laboratory that performs only waived tests
1296 ~~and has received a certificate of exemption from the agency~~
1297 ~~under s. 483.106.~~

1298 Section 34. Subsection (10) of section 483.041, Florida
1299 Statutes, is amended to read:

1300 483.041 Definitions.—As used in this part, the term:

1301 (10) "Waived test" means a test that the federal Centers
1302 for Medicare and Medicaid Services Health Care Financing
1303 ~~Administration~~ has determined qualifies for a certificate of
1304 waiver under the federal Clinical Laboratory Improvement
1305 Amendments of 1988, and the federal rules adopted thereunder.

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1306 Section 35. Section 483.106, Florida Statutes, is repealed.

1307 Section 36. Subsection (3) of section 483.172, Florida
1308 Statutes, is amended to read:

1309 483.172 License fees.—

1310 (3) The agency shall assess ~~a biennial fee of \$100 for a~~
1311 ~~certificate of exemption and~~ a \$100 license fee for facilities
1312 surveyed by an approved accrediting organization.

1313 Section 37. Paragraph (a) of subsection (1) of section
1314 483.23, Florida Statutes, is amended to read:

1315 483.23 Offenses; criminal penalties.—

1316 (1)(a) It is unlawful for any person to:

1317 1. Operate, maintain, direct, or engage in the business of
1318 operating a clinical laboratory unless she or he has obtained a
1319 clinical laboratory license from the agency ~~or is exempt under~~
1320 ~~s. 483.031.~~

1321 2. Conduct, maintain, or operate a clinical laboratory,
1322 other than an exempt laboratory or a laboratory operated under
1323 s. 483.035, unless the clinical laboratory is under the direct
1324 and responsible supervision and direction of a person licensed
1325 under part III of this chapter.

1326 3. Allow any person other than an individual licensed under
1327 part III of this chapter to perform clinical laboratory
1328 procedures, except in the operation of a laboratory ~~exempt under~~
1329 ~~s. 483.031 or a laboratory operated~~ under s. 483.035.

1330 4. Violate or aid and abet in the violation of any
1331 provision of this part or the rules adopted under this part.

1332 Section 38. This act shall take effect upon becoming a law.