

By the Committee on Health Care Standards & Regulatory
Reform and Representative Hill

1 A bill to be entitled
2 An act relating to health quality assurance;
3 amending s. 112.0455, F.S., relating to the
4 Drug-Free Workplace Act; requiring background
5 screening for an applicant for licensure of
6 certain laboratories; authorizing the use of
7 certain body hair for drug testing; creating s.
8 381.60225, F.S.; requiring background screening
9 for an applicant for certification to operate
10 an organ procurement organization, a tissue
11 bank, or an eye bank; amending s. 383.302,
12 F.S., relating to the regulation of birth
13 centers; revising definitions to reflect the
14 transfer of regulatory authority from the
15 Department of Health and Rehabilitative
16 Services to the Agency for Health Care
17 Administration; amending s. 383.305, F.S.;
18 requiring background screening for an applicant
19 for licensure of a birth center; amending ss.
20 383.308, 383.309, 383.31, 383.312, 383.313,
21 383.318, 383.32, 383.324, 383.325, 383.327,
22 383.33, and 383.331, F.S., relating to the
23 regulation of birth centers; conforming
24 provisions to reflect the transfer of
25 regulatory authority to the Agency for Health
26 Care Administration; amending s. 390.015, F.S.;
27 requiring background screening for an applicant
28 for licensure of an abortion clinic; amending
29 s. 391.206, F.S.; requiring background
30 screening for an applicant for licensure to
31 operate a pediatric extended care center;

1 amending s. 393.063, F.S., relating to
2 developmental disabilities; providing a
3 definition; correcting cross references;
4 amending s. 393.067, F.S.; requiring background
5 screening for an applicant for licensure to
6 operate an intermediate care facility for the
7 developmentally disabled; amending ss.
8 394.4787, 395.602, 395.701, and 397.405, F.S.;
9 conforming cross references to changes made by
10 the act; amending s. 394.67, F.S., relating to
11 community alcohol, drug abuse, and mental
12 health services; revising definitions; amending
13 s. 394.875, F.S.; requiring background
14 screening for an applicant for licensure of a
15 crisis stabilization unit or residential
16 treatment facility; amending ss. 394.876,
17 394.877, 394.878, 394.879, 394.90, 394.902,
18 394.903, 394.904, and 394.907, F.S., relating
19 to the regulation of mental health facilities;
20 conforming provisions to reflect the transfer
21 of regulatory authority to the Agency for
22 Health Care Administration; amending s.
23 395.002, F.S., relating to hospital licensing
24 and regulation; providing definitions; creating
25 s. 395.0055, F.S.; requiring background
26 screening for an applicant for licensure of a
27 facility operated under ch. 395, F.S.; amending
28 s. 395.0199, F.S.; requiring background
29 screening for an applicant for registration as
30 a utilization review agent; amending s.
31 400.051, F.S.; conforming a cross reference;

1 amending s. 400.071, F.S.; requiring background
2 screening for an applicant for licensure of a
3 nursing home; amending s. 400.411, F.S.;
4 requiring background screening for an applicant
5 for licensure of an assisted living facility;
6 amending ss. 400.414, 400.417, 400.4174, and
7 400.4176, F.S., relating to the regulation of
8 assisted living facilities; providing
9 additional grounds for denial, revocation, or
10 suspension of a license; requiring background
11 screening for employees hired on or after a
12 specified date; amending ss. 400.461 and
13 400.462, F.S., relating to the regulation of
14 home health agencies; conforming a cross
15 reference; revising definitions; amending s.
16 400.464, F.S.; revising licensure requirements
17 for home health agencies; specifying services
18 and persons that are exempt from the licensure
19 requirements; amending s. 400.471, F.S.;
20 requiring background screening for an applicant
21 for licensure of a home health agency; revising
22 requirements for license renewal; amending s.
23 400.474, F.S.; providing penalties for
24 operating a home health agency without a
25 license; amending s. 400.484, F.S.; providing a
26 schedule for the agency to use in imposing
27 fines for various classes of violations;
28 amending s. 400.487, F.S.; revising
29 requirements for patient assessment and
30 services; amending s. 400.491, F.S.; revising
31 requirements for maintaining patient records;

1 amending s. 400.497, F.S.; revising
2 requirements for the agency in establishing
3 minimum standards; amending s. 400.506, F.S.;
4 revising licensure and referral requirements
5 for nurse registries; requiring background
6 screening for an applicant for licensure as a
7 nurse registry; amending s. 400.509, F.S.;
8 requiring background screening for an applicant
9 for registration as a service provider who is
10 exempt from licensure; amending s. 400.512,
11 F.S.; revising screening requirements for home
12 health agency personnel; amending s. 400.555,
13 F.S.; requiring background screening for an
14 applicant for licensure of an adult day care
15 center; amending s. 400.556, F.S., relating to
16 disciplinary actions against adult day care
17 center licensees; making noncompliance with
18 background screening requirements a basis for
19 disciplinary action; amending s. 400.557, F.S.,
20 relating to renewal of an adult day care center
21 license; requiring an affidavit of compliance
22 with background screening requirements when a
23 license is renewed; creating s. 400.5572, F.S.;
24 requiring background screening for employees of
25 an adult day care center hired on or after a
26 specified date; amending s. 400.606, F.S.;
27 requiring background screening for an applicant
28 for licensure of a hospice; creating s.
29 400.6065, F.S.; providing requirements for
30 background screening of hospice employees;
31 amending s. 400.607, F.S., relating to

1 disciplinary actions against a hospice license;
2 making noncompliance with background screening
3 requirements a basis for disciplinary action;
4 amending s. 400.619, F.S.; revising background
5 screening requirements for an applicant for
6 licensure of an adult family care home;
7 providing screening requirements for designated
8 relief persons; deleting agency authority to
9 take disciplinary action against an adult
10 family-care home license; revising rulemaking
11 authority; creating s. 400.6194, F.S.;
12 providing for disciplinary action against an
13 adult family-care home license; making
14 noncompliance with screening requirements a
15 basis for disciplinary action; amending s.
16 400.801, F.S.; requiring background screening
17 for an applicant for licensure of a home for
18 special services; amending s. 400.805, F.S.;
19 requiring background screening for an applicant
20 for licensure of a transitional living
21 facility; amending ss. 408.032, 408.072,
22 409.905, 419.001, and 440.13, F.S.; conforming
23 cross references to changes made by the act;
24 amending s. 430.04, F.S.; providing duties and
25 responsibilities of the Department of Elderly
26 Affairs; requiring the department to take
27 disciplinary action against an area agency on
28 aging for failure to implement and maintain a
29 department-approved grievance resolution
30 procedure; amending s. 455.654, F.S., relating
31 to referring health care providers; conforming

1 cross references to changes made by the act;
2 amending s. 468.505, F.S., relating to
3 disciplinary action against certain medical
4 professionals and activities exempt from
5 regulation; updating provisions and conforming
6 cross references; amending s. 483.101, F.S.;
7 requiring background screening for an applicant
8 for licensure of a clinical laboratory;
9 amending s. 483.106, F.S., relating to a
10 certificate of exemption; correcting
11 terminology; amending s. 483.30, F.S.;
12 requiring background screening for an applicant
13 for licensure of a multiphasic health testing
14 center; amending ss. 92.53, 914.16, 914.17,
15 918.16, 943.0585, and 943.059, F.S.; conforming
16 cross references to changes made by the act;
17 repealing s. 455.661, F.S., relating to
18 requirements for licensure of designated health
19 care services; providing appropriations and
20 authorizing positions; providing for
21 applicability of background screening
22 requirements; providing an effective date.

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

25
26 Section 1. Subsection (12) and paragraph (b) of
27 subsection (13) of section 112.0455, Florida Statutes, are
28 amended to read:

29 112.0455 Drug-Free Workplace Act.--

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

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1 (a) A laboratory may analyze initial or confirmation
2 drug specimens only if:

3 1. The laboratory is licensed and approved by the
4 Agency for Health Care Administration using criteria
5 established by the United States Department of Health and
6 Human Services as general guidelines for modeling the state
7 drug testing program. Each applicant for licensure must comply
8 with the 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 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 abuse registry background check and the Department of Law
3 Enforcement background check, but the agency has not yet
4 received background screening results from the Federal Bureau
5 of Investigation, or a request for a disqualification
6 exemption has been submitted to the agency as set forth in
7 chapter 435 but a response has not yet been issued. A license
8 may be granted to the applicant upon the agency's receipt of a
9 report of the results of the Federal Bureau of Investigation
10 background screening for each individual required by this
11 section to undergo background screening which confirms that
12 all standards have been met, or upon the granting of a
13 disqualification exemption by the agency as set forth in
14 chapter 435. Any other person who is required to undergo level
15 2 background screening may serve in his or her capacity
16 pending the agency's receipt of the report from the Federal
17 Bureau of Investigation. However, the person may not continue
18 to serve if the report indicates any violation of background
19 screening standards and a disqualification exemption has not
20 been requested of and granted by the agency as set forth in
21 chapter 435.

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

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

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

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

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

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

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- 1 (II) Has had prior action taken against the applicant
2 under the Medicaid or Medicare programs as set forth in
3 sub-subparagraph e.
- 4 i. An application for license renewal must contain the
5 information required under sub-subparagraphs e. and f.
- 6 2. The laboratory has written procedures to ensure
7 chain of custody.
- 8 3. The laboratory follows proper quality control
9 procedures, including, but not limited to:
- 10 a. The use of internal quality controls including the
11 use of samples of known concentrations which are used to check
12 the performance and calibration of testing equipment, and
13 periodic use of blind samples for overall accuracy.
- 14 b. An internal review and certification process for
15 drug test results, conducted by a person qualified to perform
16 that function in the testing laboratory.
- 17 c. Security measures implemented by the testing
18 laboratory to preclude adulteration of specimens and drug test
19 results.
- 20 d. Other necessary and proper actions taken to ensure
21 reliable and accurate drug test results.
- 22 (b) A laboratory shall disclose to the employer a
23 written test result report within 7 working days after receipt
24 of the sample. All laboratory reports of a drug test result
25 shall, at a minimum, state:
- 26 1. The name and address of the laboratory which
27 performed the test and the positive identification of the
28 person tested.
- 29 2. Positive results on confirmation tests only, or
30 negative results, as applicable.
- 31

1 3. A list of the drugs for which the drug analyses
2 were conducted.

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

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

8
9 No report shall disclose the presence or absence of any drug
10 other than a specific drug and its metabolites listed pursuant
11 to this section.

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

22 (d) Laboratories shall provide technical assistance to
23 the employer, employee, or job applicant for the purpose of
24 interpreting any positive confirmed test results which could
25 have been caused by prescription or nonprescription medication
26 taken by the employee or job applicant.

27 (13) RULES.--

28 (b) The following standards and procedures are
29 established related to hair testing:

30 1. Hair cutoff levels for initial drug-screening
31 tests.--The following initial cutoff levels must be used when

1 screening hair specimens to determine whether they are
2 negative for these drugs or their metabolites:
3 a. Marijuana: 10 pg/10 mg of hair;
4 b. Cocaine: 5 ng/10 mg of hair; and
5 c. Opiate/synthetic narcotics and metabolites: 5
6 ng/10 mg of hair. For the purpose of this section, opiate and
7 metabolites include the following:
8 (I) Codeine;
9 (II) Heroin, monoacetylmorphine ~~monoacetylmorphine~~
10 (heroin metabolites);
11 (III) Morphine;
12 d. Phencyclidine: 3 ng/10 mg of hair; and
13 e. Amphetamines: 5 ng/10 mg of hair. For the purpose
14 of this section, amphetamines include the following:
15 (I) Amphetamines;
16 (II) Methamphetamine;
17 2. Hair cutoff levels for drug confirmation testing.--
18 a. All specimens identified as positive on the initial
19 test must be confirmed using gas chromatography/mass
20 spectrometry (GC/MS), mass spectrometry/mass spectrometry
21 (MS/MS) at the following cutoff levels for these drugs on
22 their metabolites. All confirmations must be by quantitative
23 analysis.
24 (I) Marijuana metabolites: 1 pg/10 mg of hair
25 (Delta-9-tetrahydrocannabinol-0-carboxylic acid).
26 (II) Cocaine: must be at or above 5 ng/10 mg of hair.
27 Cocaine metabolites if present will be recorded at the
28 following minimum levels:
29 (A) Benzoylcegonine at 1 ng/10 mg of hair; and
30 (B) Cocaethylene at 1 ng/10 mg of hair.
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1 (III) Opiate/synthetic narcotics and metabolites: 5
2 ng/10 mg of hair; opiate and metabolites include the
3 following:
4 (A) Codeine;
5 (B) 6-Monoacetylmorphine (heroin metabolite); and
6 (C) Morphine.
7 (IV) Phencyclidine: 3 ng/10 mg of hair.
8 (V) Amphetamines: 5 ng/10 mg of hair. For the
9 purpose of this section, amphetamines include the following:
10 (A) Amphetamines; and
11 (B) Methamphetamines.
12 b. All hair specimens undergoing confirmation must be
13 decontaminated using a wash procedure which has been published
14 in the peer-reviewed literature which, as a minimum, has an
15 initial 15-minute organic solvent wash followed by multiple
16 (minimum of three) 30-minute aqueous washes.
17 c. After hair is washed, the drug entrapped in the
18 hair is released either by digestion (chemical or enzymatic)
19 or by multiple solvent extractions. The resulting digest or
20 pooled solvent extracts are then screened and confirmed by
21 approved methods.
22 d. All confirmation analysis methods must eliminate
23 the melanin fraction of the hair before analysis. If a
24 nondigestion method is used, the laboratory must present
25 published data in the peer-reviewed literature from a large
26 population study which indicates that the method of extraction
27 does not possess a statistically significant hair-color bias.
28 e. Additional hair samples may be collected to
29 reconfirm the initial report. The recollected sample shall be
30 retested as specified; however, the confirmation analysis must
31 be performed even if the screening test is negative. A second

1 positive report must be made if the drug concentration in the
2 digest by confirmation methods exceeds the limit of
3 quantitation of the testing laboratory's method. A second test
4 must be offered to anyone disputing a positive hair test
5 result.

6 3. Hair specimen collection procedures.--

7 a. Designation of collection site.--Each drug-testing
8 program shall have one or more designated collection sites
9 which have all necessary personnel, materials, equipment,
10 facilities, and supervision to provide for the collection,
11 security, temporary storage, and shipping or transportation of
12 hair specimens to a licensed drug-testing facility.

13 b. Security.--While security is important with any
14 collection, in the case of hair, only the temporary storage
15 area in the designated collection site needs to be secure.

16 c. Chain of custody.--Chain-of-custody standardized
17 forms shall be properly executed by authorized collection site
18 personnel upon receipt of specimens. Handling and
19 transportation of hair specimens from one authorized
20 individual or place to another shall always be accomplished
21 through chain-of-custody procedures. Every effort shall be
22 made to minimize the number of persons handling specimens.

23 d. Access to authorized personnel only.--The hair
24 collection site need be off limits to unauthorized personnel
25 only during the actual collection of specimens.

26 e. Privacy.--Procedures for collecting hair should be
27 performed on one individual at a time to prevent substitutions
28 or interference with the collection of reliable samples.
29 Procedures must ensure that the hair collection does not
30 infringe on the individual's privacy.

31

1 f. Integrity and identity of specimen.--Precautions
2 must be taken to ensure that the root end of a hair specimen
3 is indicated for the laboratory which performs the testing.
4 The maximum length of hair that shall be tested is 3.9 cm
5 distal from the head, which on average represents a 3-month
6 time window. The following minimum precautions must be taken
7 when collecting a hair specimen to ensure that specimens are
8 obtained and correctly identified:

9 (I) When an individual arrives at the collection site,
10 the collection site personnel shall request the individual to
11 present photo identification. If the individual does not have
12 proper photo identification, the collection site personnel
13 shall contact the supervisor of the individual, the
14 coordinator of the drug testing program, or any other employer
15 official who can positively identify the individual. If the
16 individual's identity cannot be established, the collection
17 site personnel shall not proceed with the collection.

18 (II) If the individual fails to arrive at the assigned
19 time, the collection site personnel shall contact the
20 appropriate authority to obtain guidance on the action to be
21 taken.

22 (III) The collection site personnel shall note any
23 unusual behavior or appearance on the chain-of-custody form.

24 (IV) Hair shall be cut as close to the scalp or body,
25 excluding the pubic area, as possible. Upon taking the
26 specimen from the individual, the collection site personnel
27 shall determine that it contains approximately 1/2 -inch of
28 hair when fanned out on a ruler (about 40 mg of hair).

29 (V) Both the individual being tested and the
30 collection site personnel shall keep the specimen in view at
31 all times prior to the specimen container being sealed with a

1 | tamper-resistant seal and labeled with the individual's
2 | specimen number and other required information.

3 | (VI) The collection site personnel shall label the
4 | container which contains the hair with the date, the
5 | individual's specimen number, and any other identifying
6 | information provided or required by the drug-testing program.

7 | (VII) The individual shall initial the container for
8 | the purpose of certifying that it is the specimen collected
9 | from the individual.

10 | (VIII) The collection site personnel shall indicate on
11 | the chain-of-custody form all information identifying the
12 | specimen. The collection site personnel shall sign the
13 | chain-of-custody form next to the identifying information or
14 | the chain of custody on the specimen container.

15 | (IX) The individual must be asked to read and sign a
16 | statement certifying that the specimen identified as having
17 | been collected from the individual is in fact that specimen
18 | the individual provided.

19 | (X) The collection site personnel shall complete the
20 | chain-of-custody form.

21 | g. Collection control.--To the maximum extent
22 | possible, collection site personnel shall keep the
23 | individual's specimen container within sight both before and
24 | after collection. After the specimen is collected, it must be
25 | properly sealed and labeled. An approved chain-of-custody form
26 | must be used for maintaining control and accountability of
27 | each specimen from the point of collection to final
28 | disposition of the specimen. The date and purpose must be
29 | documented on an approved chain-of-custody form each time a
30 | specimen is handled or transferred and every individual in the
31 |

1 chain must be identified. Every effort must be made to
2 minimize the number of persons handling specimens.

3 h. Transportation to the testing facility.--Collection
4 site personnel shall arrange to transport the collected
5 specimens to the drug-testing facility. The specimens shall be
6 placed in containers which shall be securely sealed to
7 eliminate the possibility of undetected tampering. The
8 collection site personnel shall ensure that the
9 chain-of-custody documentation is sealed separately from the
10 specimen and placed inside the container sealed for transfer
11 to the drug-testing facility.

12 4. Quality assurance and quality control.--

13 a. Quality assurance.--Testing facilities shall have a
14 quality assurance program which encompasses all aspects of the
15 testing process, including, but not limited to, specimen
16 acquisition, chain of custody, security and reporting of
17 results, initial and confirmatory testing, and validation of
18 analytical procedures. Quality assurance procedures shall be
19 designed, implemented, and reviewed to monitor the conduct of
20 each step of the process of testing for drugs.

21 b. Quality control.--

22 (I) Each analytical run of specimens to be screened
23 shall include:

24 (A) Hair specimens certified to contain no drug;
25 (B) Hair specimens fortified with known standards; and
26 (C) Positive controls with the drug or metabolite at
27 or near the threshold (cutoff).

28 (II) In addition, with each batch of samples, a
29 sufficient number of standards shall be included to ensure and
30 document the linearity of the assay method over time in the
31 concentration area of the cutoff. After acceptable values are

1 obtained for the known standards, those values must be used to
2 calculate sample data. Implementation of procedures to ensure
3 that carryover does not contaminate the testing of an
4 individual's specimen must be documented. A minimum of 5
5 percent of all test samples must be quality control specimens.
6 The testing facility's quality control samples, prepared from
7 fortified hair samples of determined concentration, must be
8 included in the run and must appear as normal samples to
9 drug-screen testing facility analysis. One percent of each
10 run, with a minimum of at least one sample, must be the
11 testing facility's own quality control samples.

12 5.a. Proficiency testing.--

13 (I) Each hair drug-testing facility shall enroll and
14 demonstrate satisfactory performance in a proficiency-testing
15 program established by an independent group.

16 (II) The drug-testing facility shall maintain records
17 which document the handling, processing, and examination of
18 all proficiency-testing samples for a minimum of 2 years from
19 the date of testing.

20 (III) The drug-testing facility shall ensure that
21 proficiency-testing samples are analyzed at least three times
22 each year using the same techniques as those employed for
23 unknown specimens.

24 (IV) The proficiency-testing samples must be included
25 with the routine sample run and tested with the same frequency
26 as unknown samples by the individuals responsible for testing
27 unknown specimens.

28 (V) The drug-testing facility may not engage in
29 discussions or communications concerning proficiency-testing
30 results with other drug-testing facilities, nor may they send
31

1 proficiency-testing samples or portions of the samples to
2 another drug-testing facility for analysis.

3 b. Satisfactory performance.--

4 (I) The drug-testing facility shall maintain an
5 overall testing-event score equivalent to passing proficiency
6 scores for other drug-testing matrices.

7 (II) Failure to participate in a proficiency-testing
8 event shall result in a score of 0 percent for that testing
9 event.

10 c. Unsuccessful performance.--Failure to achieve
11 satisfactory performance in two consecutive testing events, or
12 two out of three consecutive testing events, is determined to
13 be unsuccessful performance.

14
15 This section shall not be construed to eliminate the
16 bargainable rights as provided in the collective bargaining
17 process where applicable.

18 Section 2. Section 381.60225, Florida Statutes, is
19 created to read:

20 381.60225 Background screening.--

21 (1) Each applicant for certification must comply with
22 the following requirements:

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

1 including billings for services. The applicant must comply
2 with the procedures for level 2 background screening as set
3 forth in chapter 435, as well as the requirements of s.
4 435.03(3).

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

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

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

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

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

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

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

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

10 (h) The agency may deny or revoke certification of any
11 organization, agency, or entity if the applicant:

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

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

19 (i) An application for renewal of certification must
20 contain the information required under paragraphs (e) and (f).

21 (2) An organ procurement organization, tissue bank, or
22 eye bank certified by the Agency for Health Care
23 Administration in accordance with ss. 381.6021 and 381.6022 is
24 not subject to the requirements of this section if the entity
25 has no direct patient care responsibilities and does not bill
26 patients or insurers directly for services under the Medicare
27 or Medicaid programs or for privately insured services.

28 Section 3. Section 383.302, Florida Statutes, is
29 amended to read:

30
31

1 383.302 Definitions of terms used in ss.
2 383.30-383.335.--As used in ss. 383.30-383.335, ~~unless the~~
3 ~~context otherwise requires,~~the term:
4 (1) "Agency" means the Agency for Health Care
5 Administration.
6 (2)~~(1)~~ "Birth center" means any facility, institution,
7 or place, which is not an ambulatory surgical center or a
8 hospital or in a hospital, in which births are planned to
9 occur away from the mother's usual residence following a
10 normal, uncomplicated, low-risk pregnancy.
11 (3)~~(2)~~ "Clinical staff" means individuals employed
12 full time or part time by a birth center who are licensed or
13 certified to provide care at childbirth.
14 (4)~~(3)~~ "Consultant" means a physician licensed
15 pursuant to chapter 458 or chapter 459 who agrees to provide
16 advice and services to a birth center and who either:
17 (a) Is certified or eligible for certification by the
18 American Board of Obstetrics and Gynecology, or
19 (b) Has hospital obstetrical privileges.
20 ~~(4) "Department" means the Department of Health.~~
21 (5) "Governing body" means any individual, group,
22 corporation, or institution which is responsible for the
23 overall operation and maintenance of a birth center.
24 (6) "Governmental unit" means the state or any county,
25 municipality, or other political subdivision or any
26 department, division, board, or other agency of any of the
27 foregoing.
28 (7) "Licensed facility" means a facility licensed in
29 accordance with s. 383.305.
30 (8) "Low-risk pregnancy" means a pregnancy which is
31 expected to result in an uncomplicated birth, as determined

1 through risk criteria developed by rule of the department, and
2 which is accompanied by adequate prenatal care.

3 (9) "Person" means any individual, firm, partnership,
4 corporation, company, association, institution, or joint stock
5 association and means any legal successor of any of the
6 foregoing.

7 (10) "Premises" means those buildings, beds, and
8 facilities located at the main address of the licensee and all
9 other buildings, beds, and facilities for the provision of
10 maternity care located in such reasonable proximity to the
11 main address of the licensee as to appear to the public to be
12 under the dominion and control of the licensee.

13 Section 4. Section 383.305, Florida Statutes, is
14 amended to read:

15 383.305 Licensure; issuance, renewal, denial,
16 suspension, revocation; fees; background screening.--

17 (1)(a) Upon receipt of an application for a license
18 and the license fee, the agency ~~department~~ shall issue a
19 license if the applicant and facility have received all
20 approvals required by law and meet the requirements
21 established under ss. 383.30-383.335 and by rules promulgated
22 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 ~~department~~. A
26 provisional license may be granted for a period of no more
27 than 1 year from the effective date of rules adopted by the
28 agency ~~department~~, shall expire automatically at the end of
29 its term, and may not be 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 ~~department~~.

7 (2) An application for a license, or renewal thereof,
8 shall be made to the agency ~~department~~ upon forms provided by
9 it and shall contain such information as the agency ~~department~~
10 reasonably requires, which may include affirmative evidence of
11 ability to 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 ~~department~~. Such
15 fees are payable to the agency ~~department~~ and shall be
16 deposited in a trust fund administered by the agency
17 ~~department~~, to be used for the sole purpose of carrying out
18 the provisions of ss. 383.30-383.335.

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

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

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

30 (6) Whenever the agency ~~department~~ finds that there
31 has been a substantial failure to comply with the requirements

1 established under ss. 383.30-383.335 or in rules adopted under
2 those sections ~~promulgated hereunder~~, it is authorized to
3 deny, suspend, or revoke a license.

4 (7) Each applicant for licensure must comply with the
5 following requirements:

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 abuse registry background check and the Department of Law
31 Enforcement background check, but the agency has not yet

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

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

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

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

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

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

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

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

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

31

1 Section 5. Paragraph (a) of subsection (2) of section
2 383.308, Florida Statutes, is amended to read:

3 383.308 Birth center facility and equipment;
4 requirements.--

5 (2)(a) A birth center shall be equipped with those
6 items needed to provide low-risk maternity care and readily
7 available equipment to initiate emergency procedures in
8 life-threatening events to mother and baby, as defined by rule
9 of the agency ~~department~~.

10 Section 6. Section 383.309, Florida Statutes, is
11 amended to read:

12 383.309 Minimum standards for birth centers; rules and
13 enforcement.--

14 (1) The agency ~~department~~ shall adopt, ~~amend,~~
15 ~~promulgate,~~ and enforce rules to administer ss. 383.30-383.335
16 ~~implement the provisions of this act,~~ which rules shall
17 include, but are not limited to, reasonable and fair minimum
18 standards for ensuring that:

19 (a) Sufficient numbers and qualified types of
20 personnel and occupational disciplines are available at all
21 times to provide necessary and adequate patient care and
22 safety.

23 (b) Infection control, housekeeping, sanitary
24 conditions, disaster plan, and medical record procedures that
25 will adequately protect patient care and provide safety are
26 established and implemented.

27 (c) Construction, maintenance, repair, and renovation
28 of licensed facilities are governed by rules of the agency
29 ~~department~~ which use ~~utilize~~ the most recently adopted,
30 nationally recognized codes wherever feasible. Facilities
31 licensed under s. 383.305 are exempt from local construction

1 standards to the extent that those standards are in conflict
2 with the standards adopted by rule of the agency ~~department~~.

3 (d) Licensed facilities are established, organized,
4 and operated consistent with established programmatic
5 standards.

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

12 Section 7. Paragraph (b) of subsection (1) and
13 paragraph (b) of subsection (2) of section 383.31, Florida
14 Statutes, are amended to read:

15 383.31 Selection of clients; informed consent.--

16 (1)

17 (b) The criteria for the selection of clients and the
18 establishment of risk status shall be defined by rule of the
19 agency ~~department~~.

20 (2)

21 (b) The agency ~~department~~ shall develop a client
22 informed-consent form to be used by the center to inform the
23 client of the benefits and risks related to childbirth outside
24 a hospital.

25 Section 8. Subsection (1) of section 383.312, Florida
26 Statutes, is amended to read:

27 383.312 Prenatal care of birth center clients.--

28 (1) A birth center shall ensure that its clients have
29 adequate prenatal care, as defined by the agency ~~department~~,
30 and shall ensure that serological tests are administered as
31 required by this chapter.

1 Section 9. Subsection (1) of section 383.313, Florida
2 Statutes, is amended to read:

3 383.313 Performance of laboratory and surgical
4 services; use of anesthetic and chemical agents.--

5 (1) LABORATORY SERVICES.--A birth center may collect
6 specimens for those tests that are requested under protocol.
7 A birth center may perform simple laboratory tests, as defined
8 by rule of the agency department, and is exempt from the
9 requirements of chapter 483, provided no more than five
10 physicians are employed by the birth center and testing is
11 conducted exclusively in connection with the diagnosis and
12 treatment of clients of the birth center.

13 Section 10. Subsection (1) of section 383.318, Florida
14 Statutes, is amended to read:

15 383.318 Postpartum care for birth center clients and
16 infants.--

17 (1) A mother and her infant shall be dismissed from
18 the birth center within 24 hours after the birth of the
19 infant, except in unusual circumstances as defined by rule of
20 the agency department. If a mother or infant is retained at
21 the birth center for more than 24 hours after the birth, a
22 report shall be filed with the agency department within 48
23 hours of the birth describing the circumstances and the
24 reasons for the decision.

25 Section 11. Subsection (3) of section 383.32, Florida
26 Statutes, is amended to read:

27 383.32 Clinical records.--

28 (3) Clinical records shall be kept confidential in
29 accordance with s. 455.667 ~~455.241~~ and exempt from the
30 provisions of s. 119.07(1). A client's clinical records shall
31 be open to inspection only under the following conditions:

1 (a) A consent to release information has been signed
2 by the client; or

3 (b) The review is made by the agency ~~department~~ for a
4 licensure survey or complaint investigation.

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

7 383.324 Inspections and investigations; inspection
8 fees.--

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

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

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

20 Section 13. Subsection (3) of section 383.325, Florida
21 Statutes, is amended to read:

22 383.325 Inspection reports.--

23 (3) A licensed facility shall, upon the request of any
24 person who has completed a written application with intent to
25 be admitted to such facility or any person who is a patient of
26 such facility, or any relative, spouse, or guardian of any
27 such person, furnish to the requester a copy of the last
28 inspection report issued by the agency ~~department~~ or an
29 accrediting organization, whichever is most recent, pertaining
30 to the licensed facility, as provided in subsection (1),
31

1 provided the person requesting such report agrees to pay a
2 reasonable charge to cover copying costs.

3 Section 14. Subsection (4) of section 383.327, Florida
4 Statutes, is amended to read:

5 383.327 Birth and death records; reports.--

6 (4) A report shall be submitted annually to the agency
7 ~~department~~. The contents of the report shall be prescribed by
8 rule of the agency ~~department~~.

9 Section 15. Section 383.33, Florida Statutes, is
10 amended to read:

11 383.33 Administrative penalties; emergency orders;
12 moratorium on admissions.--

13 (1)(a) The agency ~~department~~ may deny, revoke, or
14 suspend a license, or impose an administrative fine not to
15 exceed \$500 per violation per day, for the violation of any
16 provision of ss. 383.30-383.335 or any rule adopted under ss.
17 383.30-383.335 ~~promulgated hereunder~~. Each day of violation
18 constitutes a separate violation and is subject to a separate
19 fine.

20 (b) In determining the amount of the fine to be levied
21 for 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 ss. 383.30-383.335 ~~this act~~ were violated.

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

30 3. Any previous violations by the licensee.

31

1 (c) All amounts collected pursuant to this section
2 shall be deposited into a trust fund administered by the
3 agency ~~department~~ to be used for the sole purpose of carrying
4 out the provisions of ss. 383.30-383.335.

5 (2) The agency ~~department~~ may issue an emergency order
6 immediately suspending or revoking a license when it
7 determines that any condition in the licensed facility
8 presents a clear and present danger to the public health and
9 safety.

10 (3) The agency ~~department~~ may impose an immediate
11 moratorium on elective admissions to any licensed facility,
12 building or portion thereof, or service when the agency
13 ~~department~~ determines that any condition in the facility
14 presents a threat to the public health or safety.

15 Section 16. Section 383.331, Florida Statutes, is
16 amended to read:

17 383.331 Injunctive relief.--Notwithstanding the
18 existence or pursuit of any other remedy, the agency
19 ~~department~~ may maintain an action in the name of the state for
20 injunction or other process to enforce the provisions of ss.
21 383.30-383.335 and the rules adopted ~~promulgated~~ under such
22 sections.

23 Section 17. Subsection (3) is added to section
24 390.015, Florida Statutes, to read:

25 390.015 Application for license.--

26 (3) Each applicant for licensure must comply with the
27 following requirements:

28 (a) Upon receipt of a completed, signed, and dated
29 application, the agency shall require background screening, in
30 accordance with the level 2 standards for screening set forth
31 in chapter 435, of the managing employee, or other similarly

1 titled individual who is responsible for the daily operation
2 of the clinic, and of the financial officer, or other
3 similarly titled individual who is responsible for the
4 financial operation of the clinic, including billings for
5 patient care and services. The applicant must comply with the
6 procedures for level 2 background screening as set forth in
7 chapter 435, as well as the requirements of s. 435.03(3).
8 (b) The agency may require background screening of any
9 other individual who is an applicant if the agency has
10 probable cause to believe that he or she has been convicted of
11 a crime or has committed any other offense prohibited under
12 the level 2 standards for screening set forth in chapter 435.
13 (c) Proof of compliance with the level 2 background
14 screening requirements of chapter 435 which has been submitted
15 within the previous 5 years in compliance with any other
16 health care licensure requirements of this state is acceptable
17 in fulfillment of the requirements of paragraph (a).
18 (d) A provisional license 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 and the Department of Law
22 Enforcement background check, but the agency has not yet
23 received background screening results from the Federal Bureau
24 of Investigation, or a request for a disqualification
25 exemption has been submitted to the agency as set forth in
26 chapter 435 but a response has not yet been issued. A standard
27 license may be granted to the applicant upon the agency's
28 receipt of a report of the results of the Federal Bureau of
29 Investigation background screening for each individual
30 required by this section to undergo background screening which
31 confirms that all standards have been met, or upon the

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

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

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

1 include in the application a statement affirming that the
2 director's relationship to the corporation satisfies the
3 requirements of this paragraph.

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

11 (h) The agency may deny or revoke licensure if the
12 applicant:

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

17 2. Has had prior action taken against the applicant
18 under the Medicaid or Medicare programs as set forth in
19 paragraph (e).

20 (i) An application for license renewal must contain
21 the information required under paragraphs (e) and (f).

22 Section 18. Subsection (5) is added to section
23 391.206, Florida Statutes, to read:

24 391.206 Initial application for license.--

25 (5) Each applicant for licensure must comply with the
26 following requirements:

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

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

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

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

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

1 undergo level 2 background screening may serve in his or her
2 capacity pending the agency's receipt of the report from the
3 Federal Bureau of Investigation. However, the person may not
4 continue to serve if the report indicates any violation of
5 background screening standards and a disqualification
6 exemption has not been requested of and granted by the agency
7 as set forth 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 controlling
13 interests under the Medicaid or Medicare programs shall 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 by a
18 member of the board of directors of the applicant, its
19 officers, or any individual owning 5 percent or more of the
20 applicant. This requirement does not apply to a director of a
21 not-for-profit corporation or organization if the director
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 or organization's board of directors, and has no
27 financial interest and has no family members with a financial
28 interest in the corporation or organization, provided that the
29 director and the not-for-profit corporation or organization
30 include in the application a statement affirming that the
31

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

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

10 (h) The agency may deny or revoke licensure if the
11 applicant:

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

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

19 (i) An application for license renewal must contain
20 the information required under paragraphs (e) and (f).

21 Section 19. Subsections (2) through (53) of section
22 393.063, Florida Statutes, are renumbered as subsections (3)
23 through (54), respectively, the introductory paragraph of
24 present subsection (7) is amended, and a new subsection (2) is
25 added to that section, to read:

26 393.063 Definitions.--For the purposes of this
27 chapter:

28 (2) "Agency" means the Agency for Health Care
29 Administration.

30 (8)(7) "Comprehensive transitional education program"
31 means a group of jointly operating centers or units, the

1 collective purpose of which is to provide a sequential series
2 of educational care, training, treatment, habilitation, and
3 rehabilitation services to persons who have developmental
4 disabilities, as defined in subsection(12)~~(11)~~, and who have
5 severe or moderate maladaptive behaviors. However, nothing in
6 this subsection shall require comprehensive transitional
7 education programs to provide services only to persons with
8 developmental disabilities, as defined in subsection(12)
9 ~~(11)~~. All such services shall be temporary in nature and
10 delivered in a structured residential setting with the primary
11 goal of incorporating the normalization principle to establish
12 permanent residence for persons with maladaptive behaviors in
13 facilities not associated with the comprehensive transitional
14 education program. The staff shall include psychologists and
15 teachers, and such staff personnel shall be available to
16 provide services in each component center or unit of the
17 program. The psychologists shall be individuals who are
18 licensed in this state and certified as behavior analysts in
19 this state, or individuals who meet the professional
20 requirements established by the department for district
21 behavior analysts and are certified as behavior analysts in
22 this state.

23 Section 20. Subsections (6) through (18) of section
24 393.067, Florida Statutes, are renumbered as subsections (7)
25 through (19), respectively, present subsection (11) is
26 amended, and a new subsection (6) is added to that section, to
27 read:

28 393.067 Licensure of residential facilities and
29 comprehensive transitional education programs.--
30
31

1 (6) Each applicant for licensure as an intermediate
2 care facility for the developmentally disabled must comply
3 with the following requirements:

4 (a) Upon receipt of a completed, signed, and dated
5 application, the agency shall require background screening, in
6 accordance with the level 2 standards for screening set forth
7 in chapter 435, of the managing employee, or other similarly
8 titled individual who is responsible for the daily operation
9 of the facility, and of the financial officer, or other
10 similarly titled individual who is responsible for the
11 financial operation of the facility, including billings for
12 resident care and services. The applicant must comply with
13 the procedures for level 2 background screening as set forth
14 in chapter 435, as well as the 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 abuse registry background check and the Department of Law
29 Enforcement background check, but the agency has not yet
30 received background screening results from the Federal Bureau
31 of Investigation, or a request for a disqualification

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

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

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

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

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

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

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

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

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

29 (12)(11) An alternative living center and an
30 independent living education center, as defined in s.
31 393.063(8)(7), shall be subject to the provisions of s.

1 419.001, except that such centers shall be exempt from the
2 1,000-foot-radius requirement of s. 419.001(2) if:

3 (a) Such centers are located on a site zoned in a
4 manner so that all the component centers of a comprehensive
5 transition education center may be located thereon; or

6 (b) There are no more than three such centers within
7 said radius of 1,000 feet.

8 Section 21. Subsection (7) of section 394.4787,
9 Florida Statutes, is amended to read:

10 394.4787 Definitions.--As used in this section and ss.
11 394.4786, 394.4788, and 394.4789:

12 (7) "Specialty psychiatric hospital" means a hospital
13 licensed by the agency pursuant to s. 395.002(30)~~s.~~
14 ~~395.002(27)~~as a specialty psychiatric hospital.

15 Section 22. Section 394.67, Florida Statutes, is
16 amended to read:

17 394.67 Definitions.--As ~~When~~ used in this part, ~~unless~~
18 ~~the context clearly requires otherwise,~~the term:

19 (1) "Advisory council" means a district advisory
20 council.

21 (2) "Agency" means the Agency for Health Care
22 Administration.

23 ~~(2) "Alcohol, drug abuse, and mental health planning~~
24 ~~council" or "council" means the council within a Department of~~
25 ~~Health and Rehabilitative Services district or subdistrict~~
26 ~~established in accordance with the provisions of this part for~~
27 ~~the purpose of assessing the alcohol, drug abuse, and mental~~
28 ~~health needs of the community and developing a plan to address~~
29 ~~those needs.~~

30 (3) "Applicant" means an individual applicant, or any
31 officer, director, agent, managing employee, or affiliated

1 person, or any partner or shareholder having an ownership
2 interest equal to a 5-percent or greater interest in the
3 corporation, partnership, or other business entity.

4 (4) "Client" means any individual receiving services
5 in any alcohol, drug abuse, or mental health facility,
6 program, or service, which facility, program, or service is
7 operated, funded, or regulated by the agency and the
8 department or regulated by the agency.

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

14 (6)(3) "Department" means the Department of Children
15 and Family Health and Rehabilitative Services.

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

23 (8)(4) "District administrator" means the person
24 appointed by the Secretary of Children and Family Health and
25 Rehabilitative Services for the purpose of administering a
26 department service district as set forth in s. 20.19.

27 (9)(5) "District plan" or "plan" means the combined
28 district alcohol, drug abuse, and mental health plan prepared
29 by the alcohol, drug abuse, and mental health planning council
30 and approved by the district administrator and governing
31 bodies in accordance with this part.

1 (10)~~(6)~~ "Federal funds" means funds from federal
2 sources for alcohol, drug abuse, or mental health facilities
3 and programs, exclusive of federal funds that are deemed
4 eligible by the Federal Government, and are eligible through
5 state regulation, for matching purposes.

6 (11)~~(7)~~ "Governing body" means the chief legislative
7 body of a county, a board of county commissioners, or boards
8 of county commissioners in counties acting jointly, or their
9 counterparts in a charter government.

10 (12) "Licensed facility" means a facility licensed in
11 accordance with this chapter.

12 (13)~~(8)~~ "Local matching funds" means funds received
13 from governing bodies of local government, including city
14 commissions, county commissions, district school boards,
15 special tax districts, private hospital funds, private gifts,
16 both individual and corporate, and bequests and funds received
17 from community drives or any other sources.

18 (14) "Managing employee" means the administrator, or
19 other similarly titled individual who is responsible for the
20 daily operation of the facility.

21 (15)~~(9)~~ "Patient fees" means compensation received by
22 a community alcohol, drug abuse, or mental health facility for
23 services rendered to clients from any source of funds,
24 including city, county, state, federal, and private sources.

25 (16) "Premises" means those buildings, beds, and
26 facilities located at the main address of the licensee and all
27 other buildings, beds, and facilities for the provision of
28 acute or residential care which are located in such reasonable
29 proximity to the main address of the licensee as to appear to
30 the public to be under the dominion and control of the
31 licensee.

1 (17)~~(10)~~ "Program office" means the Alcohol, Drug
2 Abuse, and Mental Health Program Office of the Department of
3 Children and Family Health and Rehabilitative Services.

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

9 (19)~~(11)~~ "Service district" means a community service
10 district as established by the department under s. 20.19 for
11 the purpose of providing community alcohol, drug abuse, and
12 mental health services.

13 (20)~~(12)~~ "Service provider" means any agency in which
14 all or any portion of the programs or services set forth in s.
15 394.675 are carried out.

16 ~~(13)~~ "~~Crisis stabilization unit~~" means a program
17 ~~providing an alternative to inpatient hospitalization and~~
18 ~~which provides brief, intensive services 24 hours a day, 7~~
19 ~~days a week, for mentally ill individuals who are in an~~
20 ~~acutely disturbed state.~~

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

28 ~~(15)~~ "~~Licensed facility~~" means a facility licensed in
29 ~~accordance with this chapter.~~

30 ~~(16)~~ "~~Premises~~" means those buildings, beds, and
31 ~~facilities located at the main address of the licensee and all~~

1 ~~other buildings, beds, and facilities for the provision of~~
2 ~~acute or residential care located in such reasonable proximity~~
3 ~~to the main address of the licensee as to appear to the public~~
4 ~~to be under the dominion and control of the licensee.~~

5 ~~(17) "Client" means any individual receiving services~~
6 ~~in any alcohol, drug abuse, or mental health facility,~~
7 ~~program, or service, which facility, program, or service is~~
8 ~~operated, funded, or regulated by the Department of Health and~~
9 ~~Rehabilitative Services.~~

10 Section 23. Section 394.875, Florida Statutes, is
11 amended to read:

12 394.875 Crisis stabilization units and residential
13 treatment facilities; authorized services; license required;
14 penalties.--

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

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

30 (2) ~~After July 1, 1986,~~It is unlawful for any entity
31 to hold itself out as a crisis stabilization unit or a

1 residential treatment facility, or to act as a crisis
2 stabilization unit or a residential treatment facility, unless
3 it is licensed by the agency ~~department~~ pursuant to this
4 chapter.

5 (3) Any person who violates subsection (2) is guilty
6 of a misdemeanor of the first degree, punishable as provided
7 in s. 775.082 or s. 775.083.

8 (4) The agency ~~department~~ may maintain an action in
9 circuit court to enjoin the unlawful operation of a crisis
10 stabilization unit or a residential treatment facility if the
11 agency ~~department~~ first gives the violator 14 days' notice of
12 its intention to maintain such action and if the violator
13 fails to apply for licensure within such 14-day period.

14 (5) Subsection (2) does not apply to:

15 (a) Homes for special services licensed under chapter
16 400;

17 (b) Nursing homes licensed under chapter 400; or

18 (c) Residential child caring facilities licensed under
19 s. 409.175.

20 (6) The department, in consultation with the agency,
21 may establish multiple license classifications for residential
22 treatment facilities.

23 (7) The agency ~~may department~~ shall not issue a
24 license to a crisis stabilization unit unless the unit
25 receives state mental health funds and is affiliated with a
26 designated public receiving facility.

27 (8) The agency ~~department~~ may issue a license for a
28 crisis stabilization unit or short-term residential treatment
29 facility, certifying the number of authorized beds for such
30 facility as indicated by existing need and available
31 appropriations. The agency ~~department~~ may disapprove an

1 application for such a license if it determines that a
2 facility should not be licensed pursuant to the provisions of
3 this chapter. Any facility operating beds in excess of those
4 authorized by the agency ~~department~~ shall, upon demand of the
5 agency ~~department~~, reduce the number of beds to the authorized
6 number, forfeit its license, or provide evidence of a license
7 issued pursuant to chapter 395 for the excess beds.

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

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

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

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

31

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

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

8 (d) The number of beds to be licensed under chapter
9 394 is equal to or less than the number of beds licensed under
10 chapters 396 and 397 as of January 1, 1993.

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

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

31

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

4
5 Any facility licensed under this subsection is not required to
6 provide any services to any persons except those included in
7 the specified conditions of licensure, and is exempt from any
8 requirements related to the 60-day or greater average length
9 of stay imposed on community-based residential treatment
10 facilities otherwise licensed under this chapter.

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

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

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

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

1 health care licensure requirements of this state is acceptable
2 in fulfillment of the requirements of paragraph (a).
3 (d) A provisional license may be granted to an
4 applicant when each individual required by this section to
5 undergo background screening has met the standards for the
6 abuse registry background check and the Department of Law
7 Enforcement background check, but the agency has not yet
8 received background screening results from the Federal Bureau
9 of Investigation, or a request for a disqualification
10 exemption has been submitted to the agency as set forth in
11 chapter 435 but a response has not yet been issued. A standard
12 license may be granted to the applicant upon the agency's
13 receipt of a report of the results of the Federal Bureau of
14 Investigation background screening for each individual
15 required by this section to undergo background screening which
16 confirms that all standards have been met, or upon the
17 granting of a disqualification exemption by the agency as set
18 forth in chapter 435. Any other person who is required to
19 undergo level 2 background screening may serve in his or her
20 capacity pending the agency's receipt of the report from the
21 Federal Bureau of Investigation. However, the person may not
22 continue to serve if the report indicates any violation of
23 background screening standards and a disqualification
24 exemption has not been requested of and granted by the agency
25 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 controlling
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 (e) 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 programs 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 24. Section 394.876, Florida Statutes, is
9 amended to read:

10 394.876 Applications.--

11 (1) Any person desiring to be licensed under this
12 chapter shall apply to the agency ~~department~~ on forms provided
13 by the agency ~~department~~. The application shall contain the
14 following:

15 (a) The name and address of the applicant, the name of
16 the unit or facility, and the address of the unit or facility.

17 (b)1. If the applicant is a partnership, association,
18 or other form of entity other than an individual or a
19 corporation, the name and address of each member or owner of
20 the entity.

21 2. If the applicant is a corporation, the name and
22 address of each director or officer and the name and address
23 of each person holding at least 5 ~~10~~ percent ownership
24 interest in the corporation.

25 ~~(c) Such information as the department determines to~~
26 ~~be necessary to establish the character and competency of the~~
27 ~~applicant and of the person who is or will be administrator of~~
28 ~~the unit or facility.~~

29 (c)(d) Such information as the department and the
30 agency find ~~determines~~ necessary to determine the ability of
31

1 the applicant to carry out its responsibilities under this
2 chapter.

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

10 (3) The applicant shall provide proof of liability
11 insurance coverage in amounts set by the department and the
12 agency by rule.

13 (4) The agency ~~department~~ shall accept proof of
14 accreditation by the Joint Commission on Accreditation of
15 Hospitals in lieu of the information required by subsection
16 (1).

17 Section 25. Section 394.877, Florida Statutes, is
18 amended to read:

19 394.877 Fees.--

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

25 (2) All fees collected under this section shall be
26 deposited in the ~~Mental Health Care Facility Licensing~~ Trust
27 Fund.

28 Section 26. Subsections (1), (2), (5), and (6) of
29 section 394.878, Florida Statutes, are amended to read:

30 394.878 Issuance and renewal of licenses.--

31

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

5 (2) A license is valid for a period of 1 year. An
6 applicant for renewal of a license shall apply to the agency
7 ~~department~~ no later than 90 days before expiration of the
8 current license.

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

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

23 Section 27. Section 394.879, Florida Statutes, is
24 amended to read:

25 394.879 Rules; enforcement.--

26 (1) The department, in consultation with the agency,
27 shall adopt reasonable rules to implement this chapter,
28 including, at a minimum, rules providing standards to ensure
29 that:

30
31

- 1 (a) Sufficient numbers and types of qualified
2 personnel are on duty and available at all times to provide
3 necessary and adequate client safety and care.
- 4 (b) Adequate space is provided each client of a
5 licensed facility.
- 6 (c) Licensed facilities are limited to an appropriate
7 number of beds.
- 8 (d) Each licensee establishes and implements adequate
9 infection control, housekeeping, sanitation, disaster
10 planning, and medical recordkeeping.
- 11 (e) Licensed facilities are established, organized,
12 and operated in accordance with programmatic standards of the
13 department.
- 14 (2) Minimum firesafety standards shall be established
15 and enforced by the State Fire Marshal in cooperation with the
16 department. Such standards shall be included in the rule
17 adopted by the department after consultation with the State
18 Fire Marshal.
- 19 (3) The department, in consultation with the agency,
20 shall allow any licensed facility in operation at the time of
21 adoption of any rule a reasonable period, not to exceed 1
22 year, to bring itself into compliance with such rule.
- 23 (4) The agency ~~department~~ may impose an administrative
24 penalty of no more than \$500 per day against any licensee that
25 violates any rule adopted pursuant to this section and may
26 suspend or revoke the license or deny the renewal application
27 of such licensee. In imposing such penalty, the agency
28 ~~department~~ shall consider the severity of the violation,
29 actions taken by the licensee to correct the violation, and
30 previous violations by the licensee. Fines collected under
31

1 this subsection shall be deposited in the ~~Mental Health Care~~
2 ~~Facility Licensing~~ Trust Fund.

3 Section 28. Section 394.90, Florida Statutes, is
4 amended to read:

5 394.90 Inspection; right of entry; records.--

6 (1)(a) The department and the agency may enter and
7 inspect at any time a licensed facility to determine whether
8 the facility is in compliance with this chapter and the rules
9 of the department.

10 (b) The department and the agency may enter and
11 inspect any premises that it has probable cause to suspect may
12 be operating as an unlicensed crisis stabilization unit or
13 residential treatment facility; however, such entry and
14 inspection shall be made only with the permission of the
15 person in charge of such premises or pursuant to warrant.

16 (c) Any application for licensure under this chapter
17 constitutes full permission for the department and the agency
18 to enter and inspect the premises of the applicant or licensee
19 at any time.

20 (2) For purposes of monitoring and investigation, the
21 department and the Agency for Health Care Administration shall
22 have access to the clinical records of any client of a
23 licensee or designated facility, the provisions of s. 394.4615
24 to the contrary notwithstanding.

25 (3) The agency ~~department~~ shall schedule periodic
26 inspections of licensees so as to minimize the cost to the
27 licensees and the disruption of the licensees' programs. This
28 subsection shall not be construed to limit the authority of
29 the department and the agency to inspect the facilities of a
30 licensee at any time.

31

1 (4) Each licensee shall maintain as public
2 information, available to any person upon request, copies of
3 all reports of inspections of the licensee filed with or
4 issued by any governmental agency during the preceding 5-year
5 period. The licensee shall furnish a copy of the most recent
6 inspection report of the agency ~~department~~ to any person upon
7 payment of a reasonable charge for copying.

8 (5)(a) The agency ~~department~~ may accept, in lieu of
9 its own inspections for licensure, the survey or inspection of
10 an accrediting organization, if the provider is accredited and
11 the agency ~~department~~ receives the report of the accrediting
12 organization. The department, in consultation with the agency,
13 shall develop, and adopt by rule, specific criteria for
14 assuring that the accrediting organization has specific
15 standards and experience related to the program area being
16 licensed, specific criteria for accepting the standards and
17 survey methodologies of an accrediting organization,
18 delineations of the obligations of accrediting organizations
19 to assure adherence to those standards, criteria for
20 receiving, accepting and maintaining the confidentiality of
21 the survey and corrective action reports, and allowance for
22 the agency's ~~department's~~ participation in surveys.

23 (b) The agency ~~department~~ shall conduct compliance
24 investigations and sample validation inspections to evaluate
25 the inspection process of accrediting organizations to ensure
26 minimum standards are maintained as provided in Florida
27 statute and rule. The agency ~~department~~ may conduct a
28 lifesafety inspection in calendar years in which an
29 accrediting organization survey is not conducted and shall
30 conduct a full state inspection, including a lifesafety
31 inspection, if an accrediting organization survey has not been

1 conducted within the previous 36 months. The agency
2 ~~department~~, by accepting the survey or inspection of an
3 accrediting organization, does not forfeit its right to
4 perform inspections.

5 Section 29. Section 394.902, Florida Statutes, is
6 amended to read:

7 394.902 Denial, suspension, and revocation; other
8 remedies.--

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

14 (2) The agency ~~department~~ may impose a moratorium on
15 elective admissions to a licensee or any program or portion of
16 a licensed facility if the agency ~~department~~ determines that
17 any condition in the facility presents a threat to the public
18 health or safety.

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

28 (4) The agency ~~department~~ may maintain an action in
29 circuit court to enjoin the operation of any licensed or
30 unlicensed facility in violation of this chapter or the rules
31 adopted under this chapter.

1 (5) License denial, suspension, or revocation
2 procedures shall be in accordance with chapter 120.

3 Section 30. Subsections (1), (2), and (11) of section
4 394.903, Florida Statutes, are amended to read:

5 394.903 Receivership proceedings.--

6 (1) The agency, independently or in conjunction with
7 the department, may petition a court of competent jurisdiction
8 for the appointment of a receiver for a crisis stabilization
9 unit or a residential treatment facility when any of the
10 following conditions exist:

11 (a) Any person is operating a unit or facility without
12 a license and refuses to make application for a license as
13 required by this part.

14 (b) The licensee is closing the unit or facility or
15 has informed the agency ~~department~~ that it intends to close
16 and adequate arrangements have not been made for relocation of
17 the residents within 7 days, exclusive of weekends and
18 holidays, of the closing of the unit or facility.

19 (c) The agency ~~department~~ determines that conditions
20 exist in the unit or facility which present an imminent danger
21 to the health, safety, or welfare of the residents of the unit
22 or facility or a substantial probability that death or serious
23 physical harm would result therefrom. The agency ~~department~~
24 shall, whenever possible, facilitate the continued operation
25 of the program.

26 (d) The licensee cannot meet its financial obligations
27 for providing food, shelter, care, and utilities. Issuance of
28 bad checks or accumulation of delinquent bills for such items
29 as personnel salaries, food, drugs, or utilities constitutes
30 ~~shall constitute~~ prima facie evidence that the ownership of
31 the unit or facility lacks the financial ability to operate

1 the unit or facility in accordance with the requirements of
2 this chapter and all rules adopted under this chapter
3 ~~hereunder~~.

4 (2) Petitions for receivership shall take precedence
5 over other court business unless the court determines that
6 some other pending proceeding, having similar statutory
7 precedence, shall have priority. A hearing shall be conducted
8 within 5 days after ~~of~~ the filing of the petition, at which
9 time all interested parties shall have the opportunity to
10 present evidence pertaining to the petition. The agency
11 ~~department~~ shall notify the owner or operator of the unit or
12 facility named in the petition of its filing and the dates for
13 the hearing. The court shall grant the petition only upon
14 finding that the health, safety, and welfare of residents of
15 the unit or facility would be threatened if a condition
16 existing at the time the petition was filed is permitted to
17 continue. A receiver shall not be appointed ex parte unless
18 the court determines that one or more of the conditions of
19 subsection (1) exist and that the owner or operator cannot be
20 found, that all reasonable means of locating the owner or
21 operator and notifying him or her of the petition and hearing
22 have been exhausted, or that the owner or operator after
23 notification of the hearing chooses not to attend. After such
24 findings, the court may appoint any person qualified by
25 education, training, or experience to carry out the
26 responsibilities of receiver pursuant to this section, except
27 that it shall not appoint any owner or affiliate of the unit
28 or facility which is in receivership. Prior to the
29 appointment as receiver of a person who is the operator,
30 manager, or supervisor of another unit or facility, the court
31 shall determine that the person can reasonably operate,

1 manage, or supervise more than one unit or facility. The
2 receiver may be appointed for up to 90 days, with the option
3 of petitioning the court for 30-day extensions. The receiver
4 may be selected from a list of persons qualified to act as
5 receivers developed by the agency department and presented to
6 the court with each petition for receivership. ~~Under no~~
7 ~~circumstances shall~~ The agency or department, or a designated
8 ~~departmental~~ employee of either, may not be appointed as a
9 receiver for more than 60 days; however, such ~~the departmental~~
10 receiver may petition the court for 30-day extensions. The
11 agency department may petition the court to appoint a
12 substitute receiver. The court shall grant the extension upon
13 a showing of good cause. During the first 60 days of the
14 receivership, the agency may department ~~shall~~ not take action
15 to decertify or revoke the license of a unit or facility
16 unless conditions causing imminent danger to the health and
17 welfare of the residents exist and a receiver has been unable
18 to remove those conditions. After the first 60 days of
19 receivership, and every 60 days thereafter until the
20 receivership is terminated, the agency department shall submit
21 to the court the results of an assessment of the unit's or
22 facility's ability to assure the safety and care of the
23 residents. If the conditions at the unit or facility or the
24 intentions of the owner indicate that the purpose of the
25 receivership is to close the unit or facility rather than to
26 facilitate its continued operations, the department, in
27 consultation with the agency, shall place the residents in
28 appropriate alternative residential settings as quickly as
29 possible. If, in the opinion of the court, the agency
30 ~~department~~ has not been diligent in its efforts to make
31 adequate placement arrangements, the court may find the agency

1 ~~department~~ to be in contempt and shall order the agency
2 ~~department~~ to submit its plans for moving the residents.
3 (11) Nothing in this section shall be construed to
4 relieve any owner, operator, or employee of a unit or facility
5 placed in receivership of any civil or criminal liability
6 incurred, or any duty imposed by law, by reason of acts or
7 omissions of the owner, operator, or employee prior to the
8 appointment of a receiver; nor shall anything contained in
9 this section be construed to suspend during the receivership
10 any obligation of the owner, operator, or employee for payment
11 of taxes or other operating and maintenance expenses of the
12 unit or facility or of the owner, operator, or employee or any
13 other person for the payment of mortgages or liens. The owner
14 shall retain the right to sell or mortgage any unit or
15 facility under receivership, subject to approval of the court
16 which ordered the receivership. Receivership imposed under
17 the provisions of this chapter shall be subject to the ~~Mental~~
18 Health Care Facility Licensing Trust Fund pursuant to s.
19 394.904. The owner of a facility placed in receivership by
20 the court shall be liable for all expenses and costs incurred
21 by the ~~Mental Health Care Facility Licensing~~ Trust Fund which
22 occur as a result of the receivership.

23 Section 31. Section 394.904, Florida Statutes, is
24 amended to read:

25 394.904 ~~Mental Health Care Facility Licensing~~ Trust
26 Fund.--There is created in the State Treasury the ~~Mental~~
27 Health Care Facility Licensing Trust Fund. All moneys
28 collected by the agency department pursuant to this chapter
29 shall be deposited in the trust fund. Moneys in the trust
30 fund shall be appropriated to the agency department for the
31 purpose of covering the cost of regulation of facilities

1 licensed under this chapter and any other purpose related to
2 enforcement of this chapter.

3 Section 32. Subsections (1), (2), (3), (7), (8), and
4 (9) of section 394.907, Florida Statutes, are amended to read:

5 394.907 Community mental health centers; quality
6 assurance programs.--

7 (1) As used in this section, the term "community
8 mental health center" means a publicly funded, not-for-profit
9 center that ~~which~~ contracts with the department for the
10 provision of inpatient, outpatient, day treatment, or
11 emergency services.

12 (2) ~~Effective April 1, 1989,~~Any community mental
13 health center and any facility licensed pursuant to s. 394.875
14 shall have an ongoing quality assurance program. The purpose
15 of the quality assurance program shall be to objectively and
16 systematically monitor and evaluate the appropriateness and
17 quality of client care, to ensure that services are rendered
18 consistent with reasonable, prevailing professional standards
19 and to resolve identified problems.

20 (3) Each facility shall develop a written plan that
21 ~~which~~ addresses the minimum guidelines for the quality
22 assurance program. Such guidelines shall include, but are not
23 limited to:

24 (a) Standards for the provision of client care and
25 treatment practices;

26 (b) Procedures for the maintenance of client records;

27 (c) Policies and procedures for staff development;

28 (d) Standards for facility safety and maintenance;

29 (e) Procedures for peer review and resource
30 utilization;

31

1 (f) Policies and procedures for adverse incident
2 reporting to include verification of corrective action to
3 remediate or minimize incidents and for reporting such
4 incidents to the department by a timeframe as prescribed by
5 rule.

6
7 Such plan shall be submitted to the governing board for
8 approval and a copy provided to the department.

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

28 (8) The department, in consultation with the agency,
29 shall adopt ~~promulgate~~ rules to carry out ~~the provisions of~~
30 this section.

31

1 (9) ~~The provisions of~~ This section does ~~shall~~ not
2 apply to hospitals licensed pursuant to chapter 395 or
3 programs operated within such hospitals.
4 Section 33. Section 395.002, Florida Statutes, is
5 amended to read:
6 395.002 Definitions.--As used in this chapter:
7 (1) "Accrediting organizations" means the Joint
8 Commission on Accreditation of Healthcare Organizations, the
9 American Osteopathic Association, the Commission on
10 Accreditation of Rehabilitation Facilities, and the
11 Accreditation Association for Ambulatory Health Care, Inc.
12 (2) "Adverse or untoward incident," for purposes of
13 reporting to the agency, means an event over which health care
14 personnel could exercise control, which is probably associated
15 in whole or in part with medical intervention rather than the
16 condition for which such intervention occurred, and which
17 causes injury to a patient, and which:
18 (a) Is not consistent with or expected to be a
19 consequence of such medical intervention;
20 (b) Occurs as a result of medical intervention to
21 which the patient has not given his or her informed consent;
22 (c) Occurs as the result of any other action or lack
23 of any other action on the part of the hospital or personnel
24 of the hospital;
25 (d) Results in a surgical procedure being performed on
26 the wrong patient; or
27 (e) Results in a surgical procedure being performed
28 that is unrelated to the patient's diagnosis or medical needs.
29 (3) "Agency" means the Agency for Health Care
30 Administration.
31

1 (4) "Ambulatory surgical center" means a facility the
2 primary purpose of which is to provide elective surgical care,
3 in which the patient is admitted to and discharged from such
4 facility within the same working day and is not permitted to
5 stay overnight, and which is not part of a hospital. However,
6 a facility existing for the primary purpose of performing
7 terminations of pregnancy, an office maintained by a physician
8 for the practice of medicine, or an office maintained for the
9 practice of dentistry shall not be construed to be an
10 ambulatory surgical center, provided that any facility or
11 office which is certified or seeks certification as a Medicare
12 ambulatory surgical center shall be licensed as an ambulatory
13 surgical center pursuant to s. 395.003.

14 (5) "Applicant" means an individual applicant, or any
15 officer, director, or agent, or any partner or shareholder
16 having an ownership interest equal to a 5-percent or greater
17 interest in the corporation, partnership, or other business
18 entity.

19 ~~(6)(5)~~ "Biomedical waste" means any solid or liquid
20 waste as defined in s. 381.0098(2)(a).

21 ~~(7)(6)~~ "Clinical privileges" means the privileges
22 granted to a physician or other licensed health care
23 practitioner to render patient care services in a hospital,
24 but does not include the privilege of admitting patients.

25 ~~(8)(7)~~ "Department" means the Department of Health ~~and~~
26 ~~Rehabilitative Services.~~

27 (9) "Director" means any member of the official board
28 of directors as reported in the organization's annual
29 corporate report to the Florida Department of State, or, if no
30 such report is made, any member of the operating board of
31 directors. The term excludes members of separate, restricted

1 boards that serve only in an advisory capacity to the
2 operating board.

3 (10)~~(8)~~ "Emergency medical condition" means:

4 (a) A medical condition manifesting itself by acute
5 symptoms of sufficient severity, which may include severe
6 pain, such that the absence of immediate medical attention
7 could reasonably be expected to result in any of the
8 following:

9 1. Serious jeopardy to patient health, including a
10 pregnant woman or a fetus.

11 2. Serious impairment to bodily functions.

12 3. Serious dysfunction of any bodily organ or part.

13 (b) With respect to a pregnant woman:

14 1. That there is inadequate time to effect safe
15 transfer to another hospital prior to delivery;

16 2. That a transfer may pose a threat to the health and
17 safety of the patient or fetus; or

18 3. That there is evidence of the onset and persistence
19 of uterine contractions or rupture of the membranes.

20 (11)~~(9)~~ "Emergency services and care" means medical
21 screening, examination, and evaluation by a physician, or, to
22 the extent permitted by applicable law, by other appropriate
23 personnel under the supervision of a physician, to determine
24 if an emergency medical condition exists and, if it does, the
25 care, treatment, or surgery by a physician necessary to
26 relieve or eliminate the emergency medical condition, within
27 the service capability of the facility.

28 (12)~~(10)~~ "General hospital" means any facility which
29 meets the provisions of subsection (14)~~(12)~~ and which
30 regularly makes its facilities and services available to the
31 general population.

1 (13)~~(11)~~ "Governmental unit" means the state or any
2 county, municipality, or other political subdivision, or any
3 department, division, board, or other agency of any of the
4 foregoing.

5 (14)~~(12)~~ "Hospital" means any establishment that:
6 (a) Offers services more intensive than those required
7 for room, board, personal services, and general nursing care,
8 and offers facilities and beds for use beyond 24 hours by
9 individuals requiring diagnosis, treatment, or care for
10 illness, injury, deformity, infirmity, abnormality, disease,
11 or pregnancy; and

12 (b) Regularly makes available at least clinical
13 laboratory services, diagnostic X-ray services, and treatment
14 facilities for surgery or obstetrical care, or other
15 definitive medical treatment of similar extent.

16

17 However, the provisions of this chapter do not apply to any
18 institution conducted by or for the adherents of any
19 well-recognized church or religious denomination that depends
20 exclusively upon prayer or spiritual means to heal, care for,
21 or treat any person. For purposes of local zoning matters,
22 the term "hospital" includes a medical office building located
23 on the same premises as a hospital facility, provided the land
24 on which the medical office building is constructed is zoned
25 for use as a hospital; provided the premises were zoned for
26 hospital purposes on January 1, 1992.

27 (15)~~(13)~~ "Hospital bed" means a hospital accommodation
28 which is ready for immediate occupancy, or is capable of being
29 made ready for occupancy within 48 hours, excluding provision
30 of staffing, and which conforms to minimum space, equipment,
31 and furnishings standards as specified by rule of the

1 department for the provision of services specified in this
2 section to a single patient.

3 (16)~~(14)~~ "Initial denial determination" means a
4 determination by a private review agent that the health care
5 services furnished or proposed to be furnished to a patient
6 are inappropriate, not medically necessary, or not reasonable.

7 (17)~~(15)~~ "Injury," for purposes of reporting to the
8 agency, means any of the following outcomes if caused by an
9 adverse or untoward incident:

10 (a) Death;

11 (b) Brain damage;

12 (c) Spinal damage;

13 (d) Permanent disfigurement;

14 (e) Fracture or dislocation of bones or joints;

15 (f) Any condition requiring definitive or specialized

16 medical attention which is not consistent with the routine

17 management of the patient's case or patient's preexisting

18 physical condition;

19 (g) Any condition requiring surgical intervention to

20 correct or control;

21 (h) Any condition resulting in transfer of the

22 patient, within or outside the facility, to a unit providing a

23 more acute level of care;

24 (i) Any condition that extends the patient's length of

25 stay; or

26 (j) Any condition that results in a limitation of

27 neurological, physical, or sensory function which continues

28 after discharge from the facility.

29 (18)~~(16)~~ "Intensive residential treatment programs for

30 children and adolescents" means a specialty hospital

31 accredited by the Joint Commission on Accreditation of

1 Healthcare Organizations which provides 24-hour care and which
2 has the primary functions of diagnosis and treatment of
3 patients under the age of 18 having psychiatric disorders in
4 order to restore such patients to an optimal level of
5 functioning.

6 (19)~~(17)~~ "Licensed facility" means a hospital or
7 ambulatory surgical center licensed in accordance with this
8 chapter.

9 (20)~~(18)~~ "Lifesafety" means the control and prevention
10 of fire and other life-threatening conditions on a premises
11 for the purpose of preserving human life.

12 (21) "Managing employee" means the administrator or
13 other similarly titled individual who is responsible for the
14 daily operation of the facility.

15 (22)~~(19)~~ "Medical staff" means physicians licensed
16 under chapter 458 or chapter 459 with privileges in a licensed
17 facility, as well as other licensed health care practitioners
18 with clinical privileges as approved by a licensed facility's
19 governing board.

20 (23)~~(20)~~ "Medically necessary transfer" means a
21 transfer made necessary because the patient is in immediate
22 need of treatment for an emergency medical condition for which
23 the facility lacks service capability or is at service
24 capacity.

25 (24)~~(21)~~ "Person" means any individual, partnership,
26 corporation, association, or governmental unit.

27 (25)~~(22)~~ "Premises" means those buildings, beds, and
28 equipment located at the address of the licensed facility and
29 all other buildings, beds, and equipment for the provision of
30 hospital or ambulatory surgical care located in such
31 reasonable proximity to the address of the licensed facility

1 as to appear to the public to be under the dominion and
2 control of the licensee.

3 (26)~~(23)~~ "Private review agent" means any person or
4 entity which performs utilization review services for
5 third-party payors on a contractual basis for outpatient or
6 inpatient services. However, the term shall not include
7 full-time employees, personnel, or staff of health insurers,
8 health maintenance organizations, or hospitals, or wholly
9 owned subsidiaries thereof or affiliates under common
10 ownership, when performing utilization review for their
11 respective hospitals, health maintenance organizations, or
12 insureds of the same insurance group. For this purpose,
13 health insurers, health maintenance organizations, and
14 hospitals, or wholly owned subsidiaries thereof or affiliates
15 under common ownership, include such entities engaged as
16 administrators of self-insurance as defined in s. 624.031.

17 (27)~~(24)~~ "Service capability" means all services
18 offered by the facility where identification of services
19 offered is evidenced by the appearance of the service in a
20 patient's medical record or itemized bill.

21 (28)~~(25)~~ "At service capacity" means the temporary
22 inability of a hospital to provide a service which is within
23 the service capability of the hospital, due to maximum use of
24 the service at the time of the request for the service.

25 (29)~~(26)~~ "Specialty bed" means a bed, other than a
26 general bed, designated on the face of the hospital license
27 for a dedicated use.

28 (30)~~(27)~~ "Specialty hospital" means any facility which
29 meets the provisions of subsection (14)~~(12)~~, and which
30 regularly makes available either:
31

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

4 (b) A restricted range of services appropriate to the
5 diagnosis, care, and treatment of patients with specific
6 categories of medical or psychiatric illnesses or disorders;
7 or

8 (c) Intensive residential treatment programs for
9 children and adolescents as defined in subsection (18)~~(16)~~.

10 (31)~~(28)~~ "Stabilized" means, with respect to an
11 emergency medical condition, that no material deterioration of
12 the condition is likely, within reasonable medical
13 probability, to result from the transfer of the patient from a
14 hospital.

15 (32)~~(29)~~ "Utilization review" means a system for
16 reviewing the medical necessity or appropriateness in the
17 allocation of health care resources of hospital services given
18 or proposed to be given to a patient or group of patients.

19 (33)~~(30)~~ "Utilization review plan" means a description
20 of the policies and procedures governing utilization review
21 activities performed by a private review agent.

22 (34)~~(31)~~ "Validation inspection" means an inspection
23 of the premises of a licensed facility by the agency to assess
24 whether a review by an accrediting organization has adequately
25 evaluated the licensed facility according to minimum state
26 standards.

27 Section 34. Section 395.0055, Florida Statutes, is
28 created to read:

29 395.0055 Background screening.--Each applicant for
30 licensure must comply with the following requirements:

31

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

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

13 (3) Proof of compliance with the level 2 background
14 screening requirements of chapter 435 which has been submitted
15 within the previous 5 years in compliance with any other
16 health care licensure requirements of this state is acceptable
17 in fulfillment of the requirements of subsection (1).

18 (4) A provisional license 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 and the Department of Law
22 Enforcement background check, but the agency has not yet
23 received background screening results from the Federal Bureau
24 of Investigation, or a request for a disqualification
25 exemption has been submitted to the agency as set forth in
26 chapter 435 but a response has not yet been issued. A
27 standard license may be granted to the applicant upon the
28 agency's receipt of a report of the results of the Federal
29 Bureau of Investigation background screening for each
30 individual required by this section to undergo background
31 screening which confirms that all standards have been met, or

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

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

17 (6) Each applicant must submit to the agency a
18 description and explanation of any conviction of an offense
19 prohibited under the level 2 standards of chapter 435 by a
20 member of the board of directors of the applicant, its
21 officers, or any individual owning 5 percent or more of the
22 applicant.

23 (7) This section does not apply to a director of a
24 not-for-profit corporation or organization if the director
25 serves solely in a voluntary capacity for the corporation or
26 organization, does not regularly take part in the day-to-day
27 operational decisions of the corporation or organization,
28 receives no remuneration for his or her services on the
29 corporation or organization's board of directors, and has no
30 financial interest and has no family members with a financial
31 interest in the corporation or organization, provided that the

1 director and the not-for-profit corporation or organization
2 include in the application a statement affirming that the
3 director's relationship to the corporation satisfies the
4 requirements of this subsection.

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

12 (9) The agency may deny or revoke licensure if the
13 applicant:

14 (a) Has falsely represented a material fact in the
15 application required by subsection (5) or subsection (6), or
16 has omitted any material fact from the application required by
17 subsection (5) or subsection (6); or

18 (b) Has had prior action taken against the applicant
19 under the Medicaid or Medicare programs as set forth in
20 subsection (5).

21 (10) An application for license renewal must contain
22 the information required under subsections (5) and (6).

23 Section 35. Present subsections (4) through (9) of
24 section 395.0199, Florida Statutes, are renumbered as
25 subsections (5) through (10), respectively, and a new
26 subsection (4) is added to that section to read:

27 395.0199 Private utilization review.--

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

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

1 accordance with the level 2 standards for screening set forth
2 in chapter 435, of the managing employee or other similarly
3 titled individual who is responsible for the operation of the
4 entity. The applicant must comply with the procedures for
5 level 2 background screening as set forth in chapter 435, as
6 well as the requirements of s. 435.03(3).

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

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

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

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

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

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

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

3 (g) A 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 if
11 any applicant:

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

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

19 (i) An application for registration renewal must
20 contain the information required under paragraphs (e) and (f).

21 Section 36. Paragraph (c) of subsection (2) of section
22 395.602, Florida Statutes, is amended to read:

23 395.602 Rural hospitals.--

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

25 (c) "Inactive rural hospital bed" means a licensed
26 acute care hospital bed, as defined in s. 395.002(15)~~(13)~~,
27 that is inactive in that it cannot be occupied by acute care
28 inpatients.

29 Section 37. Paragraph (c) of subsection (1) of section
30 395.701, Florida Statutes, is amended to read:

31

1 395.701 Annual assessments on net operating revenues
2 to fund public medical assistance; administrative fines for
3 failure to pay assessments when due.--

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

5 (c) "Hospital" means a health care institution as
6 defined in s. 395.002(14)(~~12~~), but does not include any
7 hospital operated by the agency or the Department of
8 Corrections.

9 Section 38. Subsection (9) of section 397.405, Florida
10 Statutes, is amended to read:

11 397.405 Exemptions from licensure.--The following are
12 exempt from the licensing provisions of this chapter:

13 (9) Facilities licensed under s. 393.063(8)(~~7~~)that,
14 in addition to providing services to persons who are
15 developmentally disabled as defined therein, also provide
16 services to persons developmentally at risk as a consequence
17 of exposure to alcohol or other legal or illegal drugs while
18 in utero.

19
20 The exemptions from licensure in this section do not apply to
21 any facility or entity which receives an appropriation, grant,
22 or contract from the state to operate as a service provider as
23 defined in this chapter or to any substance abuse program
24 regulated pursuant to s. 397.406. No provision of this
25 chapter shall be construed to limit the practice of a
26 physician licensed under chapter 458 or chapter 459, a
27 psychologist licensed under chapter 490, or a psychotherapist
28 licensed under chapter 491, providing outpatient or inpatient
29 substance abuse treatment to a voluntary patient, so long as
30 the physician, psychologist, or psychotherapist does not
31 represent to the public that he or she is a licensed service

1 provider under this act. Failure to comply with any
2 requirement necessary to maintain an exempt status under this
3 section is a misdemeanor of the first degree, punishable as
4 provided in s. 775.082 or s. 775.083.

5 Section 39. Paragraph (b) of subsection (1) of section
6 400.051, Florida Statutes, is amended to read:

7 400.051 Homes or institutions exempt from the
8 provisions of this part.--

9 (1) The following shall be exempt from the provisions
10 of this part:

11 (b) Any hospital, as defined in s. 395.002(12)~~s.~~
12 ~~395.002(10)~~, that is licensed under chapter 395.

13 Section 40. Paragraph (a) of subsection (2) of section
14 400.071, Florida Statutes, is amended, subsections (4) through
15 (8) are renumbered as subsections (5) through (9),
16 respectively, and a new subsection (4) is added to that
17 section, to read:

18 400.071 Application for license.--

19 (2) The application shall be under oath and shall
20 contain the following:

21 (a) The name, address, and social security number of
22 the applicant if an individual; if the applicant is a firm,
23 partnership, or association, its name, address, and employer
24 identification number (EIN), and the name and address of every
25 member; if the applicant is a corporation, its name, address,
26 and employer identification number (EIN), and the name and
27 address of its director and officers and of each person having
28 at least a 5-percent ~~10-percent~~ interest in the corporation;
29 and the name by which the facility is to be known.

30 (4) Each applicant for licensure must comply with the
31 following requirements:

- 1 (a) Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening of
3 the applicant, in accordance with the level 2 standards for
4 screening set forth in chapter 435. As used in this
5 subsection, the term "applicant" means the facility
6 administrator, or similarly titled individual who is
7 responsible for the day-to-day operation of the licensed
8 facility, and the facility financial officer, or similarly
9 titled individual who is responsible for the financial
10 operation of the licensed facility.
- 11 (b) The agency may require background screening for a
12 member of the board of directors of the licensee or an officer
13 or an individual owning 5 percent or more of the licensee if
14 the agency has probable cause to believe that such individual
15 has been convicted of an offense prohibited under the level 2
16 standards for screening set forth in chapter 435.
- 17 (c) Proof of compliance with the level 2 background
18 screening requirements of chapter 435 which has been submitted
19 within the previous 5 years in compliance with any other
20 health care or assisted living licensure requirements of this
21 state is acceptable in fulfillment of the requirements of
22 paragraph (a). Proof of compliance with background screening
23 which has been submitted within the previous 5 years to
24 fulfill the requirements of the Department of Insurance
25 pursuant to chapter 651 as part of an application for a
26 certificate of authority to operate a continuing care
27 retirement community is acceptable in fulfillment of the
28 Department of Law Enforcement and Federal Bureau of
29 Investigation background check.
- 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 abuse registry background check and the Department of Law
3 Enforcement background check, but the agency has not yet
4 received background screening results from the Federal Bureau
5 of Investigation, or a request for a disqualification
6 exemption has been submitted to the agency as set forth in
7 chapter 435 but a response has not yet been issued. A license
8 may be granted to the applicant upon the agency's receipt of a
9 report of the results of the Federal Bureau of Investigation
10 background screening for each individual required by this
11 section to undergo background screening which confirms that
12 all standards have been met, or upon the granting of a
13 disqualification exemption by the agency as set forth in
14 chapter 435. Any other person who is required to undergo
15 level 2 background screening may serve in his or her capacity
16 pending the agency's receipt of the report from the Federal
17 Bureau of Investigation. However, the person may not continue
18 to serve if the report indicates any violation of background
19 screening standards and a disqualification exemption has not
20 been requested of and granted by the agency as set forth in
21 chapter 435.

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

29 (f) Each applicant must submit to the agency a
30 description and explanation of any conviction of an offense
31 prohibited under the level 2 standards of chapter 435 by a

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

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

23 (h) The agency may deny or revoke licensure if the
24 applicant:

25 1. Has falsely represented a material fact in the
26 application required by paragraph (e) or paragraph (f), or has
27 omitted any material fact from the application required by
28 paragraph (e) or paragraph (f); or

29 2. Has had prior action taken against the applicant
30 under the Medicaid or Medicare programs as set forth in
31 paragraph (e).

1 (i) An application for license renewal must contain
2 the information required under paragraphs (e) and (f).

3 Section 41. Section 400.411, Florida Statutes, is
4 amended to read:

5 400.411 Initial application for license; provisional
6 license.--

7 (1) Application for a license shall be made to the
8 agency on forms furnished by it and shall be accompanied by
9 the appropriate license fee. The application shall contain
10 sufficient information, as required by rules of the
11 department, to establish that the applicant can provide
12 adequate care.

13 (2) The applicant may be an individual owner, a
14 corporation, a partnership, a firm, an association, or a
15 governmental entity.

16 (3)(2) The application must ~~shall~~ be signed by the
17 applicant under oath and must ~~shall~~ contain the following:

18 (a) The name, address, date of birth, and social
19 security number of the applicant and the name by which the
20 facility is to be known. ~~Pursuant thereto:~~

21 ~~1.~~ If the applicant is a firm, partnership, or
22 association, the application shall contain the name, address,
23 date of birth, and social security number of every member
24 thereof.

25 ~~2.~~ If the applicant is a corporation, the application
26 shall contain the corporation's ~~its~~ name and address; ~~the~~
27 name, address, date of birth, and social security number of
28 each of its directors and officers; ~~and~~ the name and address
29 of each person having at least a 5-percent ownership
30 ~~10-percent~~ interest in the corporation.

31

1 (b) The name and address of any professional service,
2 firm, association, partnership, or corporation that is to
3 provide goods, leases, or services to the facility ~~for which~~
4 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater
5 ownership interest in the service, firm, association,
6 partnership, or corporation is owned by a person whose name
7 must be listed on the application under paragraph (a).

8 (c) ~~Information that provides a source to establish~~
9 ~~the suitable character, financial stability, and competency of~~
10 ~~the applicant and of each person specified in the application~~
11 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~
12 ~~least a 10-percent interest in the firm, partnership,~~
13 ~~association, or corporation and, if applicable, of the~~
14 ~~administrator, including~~ The name and address of any long-term
15 care facility with which the applicant, ~~or administrator, or~~
16 financial officer has been affiliated through ownership or
17 employment within 5 years of the date of this license ~~the~~
18 ~~application for a license~~; and a signed affidavit disclosing
19 any financial or ownership interest that the applicant, or any
20 person listed in paragraph (a) principal, partner, or
21 ~~shareholder thereof~~, holds or has held within the last 5 years
22 in any ~~other~~ facility licensed under this part, or in any
23 other entity licensed by this ~~the~~ state or another state to
24 provide health or residential care, which facility or entity
25 closed or ceased to operate as a result of financial problems.

26 (d) A description and explanation of any exclusions,
27 permanent suspensions, or terminations of the applicant from
28 the Medicare or Medicaid programs. Proof of compliance with
29 requirements for disclosure of ownership and controlling
30 interests under the Medicaid or Medicare programs shall be
31 accepted in lieu of this submission.

1 ~~(e)(d)~~ The names and addresses of other persons of
2 whom the agency may inquire as to the character, and
3 reputation, and financial responsibility of the owner
4 ~~applicant~~ and, if different from the applicant, applicable, of
5 the administrator and financial officer.

6 ~~(e)~~ ~~The names and addresses of other persons of whom~~
7 ~~the agency may inquire as to the financial responsibility of~~
8 ~~the applicant.~~

9 (f) Identification of all other homes or facilities,
10 including the addresses and the license or licenses under
11 which they operate, if applicable, which are currently
12 operated by the applicant or administrator and which provide
13 housing, meals, and personal services to residents ~~adults~~.

14 ~~(g)~~ ~~Such other reasonable information as may be~~
15 ~~required by the agency to evaluate the ability of the~~
16 ~~applicant to meet the responsibilities entailed under this~~
17 ~~part.~~

18 ~~(g)(h)~~ The location of the facility for which a
19 license is sought and documentation, signed by the appropriate
20 local government official, which states that the applicant has
21 met local zoning requirements.

22 ~~(h)(i)~~ The name, address, date of birth, social
23 security number, education, and experience of the
24 administrator, if different from the applicant.

25 ~~(4)(3)~~ The applicant shall furnish satisfactory proof
26 of financial ability to operate and conduct the facility in
27 accordance with the requirements of this part. ~~An applicant~~
28 ~~applying for an initial license shall submit a balance sheet~~
29 ~~setting forth the assets and liabilities of the owner and a~~
30 ~~statement projecting revenues, expenses, taxes, extraordinary~~
31

1 ~~items, and other credits or charges for the first 12 months of~~
2 ~~operation of the facility.~~

3 (5)~~(4)~~ If the applicant is a continuing care facility
4 certified under offers continuing care agreements, as defined
5 in chapter 651, a copy of the facility's proof shall be
6 furnished that the applicant has obtained a certificate of
7 authority must be provided as required for operation under
8 that chapter.

9 (6)~~(5)~~ The applicant shall provide proof of liability
10 insurance as defined in s. 624.605.

11 (7)~~(6)~~ If the applicant is a community residential
12 home, the applicant must provide proof that it has met the
13 requirements specified in chapter 419 shall apply to community
14 residential homes zoned single-family or multifamily.

15 (8)~~(7)~~ The applicant must provide the agency with
16 proof of legal right to occupy the property. ~~This proof may~~
17 ~~include, but is not limited to, copies of recorded warranty~~
18 ~~deeds, or copies of lease or rental agreements, contracts for~~
19 ~~deeds, quitclaim deeds, or other such documentation.~~

20 (9)~~(8)~~ The applicant must furnish proof that the
21 facility has received a satisfactory firesafety inspection.
22 The local ~~fire marshal or other~~ authority having jurisdiction
23 or the State Fire Marshal must conduct the inspection within
24 30 days after ~~the~~ written request by the applicant. ~~if an~~
25 ~~authority having jurisdiction does not have a certified~~
26 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
27 ~~inspection.~~

28 (10) The applicant must furnish proof of compliance
29 with level 2 background screening as required under s.
30 400.4174.

31

1 (11)~~(9)~~ A provisional license may be issued to an
2 applicant making initial application for licensure or making
3 application for a change of ownership. A provisional license
4 shall be limited in duration to a specific period of time not
5 to exceed 6 months, as determined by the agency.

6 (12)~~(10)~~ A ~~No~~ county or municipality may not ~~shall~~
7 issue an occupational license that ~~which~~ is being obtained for
8 the purpose of operating a facility regulated under this part
9 without first ascertaining that the applicant has been
10 licensed to operate such facility at the specified location or
11 locations by the agency. The agency shall furnish to local
12 agencies responsible for issuing occupational licenses
13 sufficient instruction for making such ~~the above required~~
14 determinations.

15 (13) The department may by rule establish application
16 procedures, identify forms, and specify documentation
17 necessary to administer this section.

18 Section 42. Section 400.414, Florida Statutes, is
19 amended to read:

20 400.414 Denial, revocation, or suspension of license;
21 imposition of administrative fine; grounds.--

22 (1) The agency may deny, revoke, or suspend any ~~a~~
23 license issued under this part, or impose an administrative
24 fine in the manner provided in chapter 120, for. ~~At the~~
25 ~~chapter 120 hearing, the agency shall prove by a preponderance~~
26 ~~of the evidence that its actions are warranted.~~

27 ~~(2)~~ any of the following actions by an assisted living
28 a facility, any person subject to level 2 background screening
29 under s. 400.4174, or any facility ~~or its~~ employee ~~shall be~~
30 grounds for action by the agency against a licensee:
31

1 (a) An intentional or negligent act seriously
2 affecting the health, safety, or welfare of a resident of the
3 facility.

4 (b) The determination by the agency that ~~the facility~~
5 ~~owner or administrator is not of suitable character or~~
6 ~~competency, or that the owner lacks the financial ability, to~~
7 ~~provide continuing adequate care to residents, pursuant to the~~
8 ~~information obtained through s. 400.411, s. 400.417, or s.~~
9 ~~400.434.~~

10 (c) Misappropriation or conversion of the property of
11 a resident of the facility.

12 (d) Failure to follow the criteria and procedures
13 provided under part I of chapter 394 relating to the
14 transportation, voluntary admission, and involuntary
15 examination of a facility resident.

16 (e) Five or more ~~repeated or recurring identical or~~
17 ~~similar~~ class III violations that are similar or identical to
18 violations of this part which were identified by the agency
19 during the previous survey last biennial inspection,
20 monitoring visit, or complaint investigation and which, in the
21 aggregate, affect the health, safety, or welfare of the
22 facility residents.

23 (f) A determination that a person subject to level 2
24 background screening under s. 400.4174(1) does not meet the
25 screening standards of s. 435.04 or that the facility is
26 retaining an employee subject to level 1 background screening
27 standards under s. 400.4174(2) who does not meet the screening
28 standards of s. 435.03 and for whom exemptions from
29 disqualification have not been provided by the agency.

30 (g)~~(f)~~ A confirmed report of adult abuse, neglect, or
31 exploitation, as defined in s. 415.102, which has been upheld

1 following a chapter 120 hearing or a waiver of such
2 proceedings where the perpetrator is an employee, volunteer,
3 administrator, or owner, or otherwise has access to the
4 residents of a facility, and the owner or administrator has
5 not taken action to remove the perpetrator. Exemptions ~~from~~
6 ~~disqualification~~ may be granted as set forth in s. 435.07. ~~No~~
7 ~~administrative action may be taken against the facility if the~~
8 ~~perpetrator is granted an exemption.~~

9 (h)(g) Violation of a moratorium.

10 (i)(h) Failure of the license applicant, the licensee
11 during relicensure, or ~~failure of~~ a licensee that holds a
12 provisional ~~an initial or change of ownership~~ license, to meet
13 minimum license ~~standards or the~~ requirements of ~~rules adopted~~
14 ~~under~~ this part.

15 (j)(i) A fraudulent statement or omission of any
16 material fact on an application for a license or any other
17 document required by the agency, including the submission of a
18 license application that conceals the fact that any board
19 member, officer, or person owning 5 percent or more of the
20 facility may not meet the background screening requirements of
21 s. 400.4174, or that the applicant has been excluded,
22 permanently suspended, or terminated from the Medicaid or
23 Medicare programs ~~that is signed and notarized.~~

24 (k)(j) An intentional or negligent life-threatening
25 act in violation of the uniform firesafety standards for
26 assisted living facilities or other firesafety standards
27 ~~established by the State Fire Marshal,~~ that threatens the
28 health, safety, or welfare of a resident of a facility, as
29 communicated to the agency by the ~~State Fire Marshal,~~ a local
30 ~~fire marshal, or other~~ authority having jurisdiction or the
31 State Fire Marshal.

1 (1) Exclusion, permanent suspension, or termination
2 from the Medicare or Medicaid programs.

3
4 ~~(3)~~ Proceedings brought under paragraphs ~~(2)~~(a), (c), (e),
5 and (k)~~(j)~~ shall not be subject to de novo review.

6 (2)~~(4)~~ Upon notification by the ~~State Fire Marshal,~~
7 ~~local fire marshal, or other~~ authority having jurisdiction or
8 by the State Fire Marshal, the agency may deny or revoke the
9 license of an assisted living ~~a~~ facility that fails to correct
10 cited fire code violations ~~issued by the State Fire Marshal, a~~
11 ~~local fire marshal, or other authority having jurisdiction,~~
12 that affect or threaten the health, safety, or welfare of a
13 resident of a facility.

14 (3)~~(5)~~ The agency may deny a license to an applicant
15 who owns or owned 25 percent or more of, or operates or
16 operated, an assisted living ~~a~~ facility which, during the 5
17 years prior to the application for a license, has had a
18 license denied, suspended, or revoked ~~pursuant to subsection~~
19 ~~(2)~~, or, during the 2 years prior to the application for a
20 license, has had a moratorium imposed on admissions, has had
21 an injunctive proceeding initiated against it, has had a
22 receiver appointed, was closed due to financial inability to
23 operate, or has an outstanding fine assessed under this part.

24 (4)~~(6)~~ An action taken by the agency to suspend, deny,
25 or revoke a facility's license under this part, in which the
26 agency claims that the facility owner or an employee of the
27 facility has threatened the health, safety, or welfare of a
28 resident of the facility, shall, upon receipt of the
29 facility's request for a hearing, be heard by the Division of
30 Administrative Hearings of the Department of Management
31 Services within 120 days after the request for a hearing,

1 unless that time period is waived by both parties. The
2 administrative law judge must render a decision within 30 days
3 after the hearing.

4 ~~(5)(7)~~ The agency shall provide to the Division of
5 Hotels and Restaurants of the Department of Business and
6 Professional Regulation, on a monthly basis, a list of those
7 assisted living facilities ~~that~~ ~~which~~ have had their licenses
8 denied, suspended, or revoked or ~~that~~ ~~which~~ are involved in an
9 appellate proceeding pursuant to s. 120.60 related to the
10 denial, suspension, or revocation of a license.

11 Section 43. Subsection (1) of section 400.417, Florida
12 Statutes, is amended to read:

13 400.417 Expiration of license; renewal; conditional
14 license.--

15 (1) Biennial licenses ~~issued for the operation of a~~
16 ~~facility~~, unless sooner suspended or revoked, shall expire
17 ~~automatically~~ 2 years from the date of issuance. The agency
18 shall notify the facility by certified mail at least 120 days
19 prior to ~~the expiration of the license~~ that a renewal license
20 ~~relicensure~~ is necessary to continue operation. Ninety days
21 prior to the expiration date, an application for renewal shall
22 be submitted to the agency. A license shall be renewed upon
23 the filing of an application on forms furnished by the agency
24 if the applicant has first met the requirements established
25 under this part and all rules adopted ~~promulgated~~ under this
26 part. The failure to file a timely renewal application shall
27 result in a late fee charged to the facility in an amount
28 equal to 50 percent of the current fee ~~in effect on the last~~
29 ~~preceding regular renewal date~~. Late fees shall be deposited
30 into the Health Care Trust Fund as provided in s. 400.418.
31 The facility shall file with the application satisfactory

1 proof of ability to operate and conduct the facility in
2 accordance with the requirements of this part. An applicant
3 for renewal of a license must furnish proof that the facility
4 has received a satisfactory firesafety inspection, conducted
5 by the local ~~fire marshal or other~~ authority having
6 jurisdiction or the State Fire Marshal, within the preceding
7 12 months and an affidavit of compliance with the background
8 screening requirements of s. 400.4174. An applicant for
9 renewal of a license who has complied ~~on the initial license~~
10 ~~application~~ with the provisions of s. 400.411 with respect to
11 proof of financial ability to operate shall not be required to
12 provide further proof ~~of financial ability on renewal~~
13 ~~applications~~ unless the facility or any other facility owned
14 or operated in whole or in part by the same person or business
15 entity has demonstrated financial instability as evidenced by
16 bad checks, delinquent accounts, or nonpayment of withholding
17 taxes, utility expenses, or other essential services or unless
18 the agency suspects that the facility is not financially
19 stable as a result of the annual survey or complaints from the
20 public or a report from the State Long-Term Care Ombudsman
21 Council established under s. 400.0067. Each facility shall
22 report to the agency any adverse court action concerning the
23 facility's financial viability, within 7 days after its
24 occurrence. The agency shall have access to books, records,
25 and any other financial documents maintained by the facility
26 to the extent necessary to determine the facility's financial
27 stability ~~carry out the purpose of this section~~. The agency
28 may not renew a license for the operation of a facility ~~shall~~
29 ~~not be renewed~~ if the licensee has any outstanding fines
30 assessed pursuant to this part which are in final order
31 status.

1 Section 44. Section 400.4174, Florida Statutes, is
2 amended to read:

3 400.4174 Background screening; exemptions; reports of
4 abuse in facilities.--

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

9 1. The facility owner if an individual; the
10 administrator; and the financial officer.

11 2. An officer or board member if the facility owner is
12 a firm, corporation, partnership, or association, or any
13 person owning 5 percent or more of the facility if the agency
14 has probable cause to believe that such person has been
15 convicted of any offense prohibited by s. 435.04. For each
16 officer, board member, or person owning 5 percent or more who
17 has been convicted of any such offense, the facility shall
18 submit to the agency a description and explanation of the
19 conviction at the time of license application. This
20 subparagraph does not apply to a board member of a
21 not-for-profit corporation or organization if the board member
22 serves solely in a voluntary capacity, does not regularly take
23 part in the day-to-day operational decisions of the
24 corporation or organization, receives no remuneration for his
25 or her services, and has no financial interest and has no
26 family members with a financial interest in the corporation or
27 organization, provided that the board member and facility
28 submit a statement affirming that the board member's
29 relationship to the facility satisfies the requirements of
30 this subparagraph.

31

1 (b) Proof of compliance with level 2 screening
2 standards which has been submitted within the previous 5 years
3 to meet any facility or professional licensure requirements of
4 the agency or the Department of Health satisfies the
5 requirements of this subsection, provided that such proof is
6 accompanied, under penalty of perjury, by an affidavit of
7 compliance with the provisions of chapter 435. Proof of
8 compliance with the background screening requirements of the
9 Department of Insurance for applicants for a certificate of
10 authority to operate a continuing care retirement community
11 under chapter 651, submitted within the last 5 years,
12 satisfies the Department of Law Enforcement and Federal Bureau
13 of Investigation portions of a level 2 background check.

14 (c) The agency may grant a provisional license to a
15 facility applying for an initial license when each individual
16 required by this subsection to undergo screening has completed
17 the abuse registry and Department of Law Enforcement
18 background checks, but has not yet received results from the
19 Federal Bureau of Investigation, or when a request for an
20 exemption from disqualification has been submitted to the
21 agency pursuant to s. 435.07, but a response has not been
22 issued.

23 (2) The owner or administrator of an assisted living
24 facility must conduct level 1 background screening, as set
25 forth in chapter 435, on all employees hired on or after
26 October 1, 1998, who perform personal services as defined in
27 s. 400.402(18). The agency may exempt an individual from
28 employment disqualification as set forth in chapter 435. Such
29 persons shall be considered as having met this requirement if:

30 (a) Proof of compliance with level 1 screening
31 requirements obtained to meet any professional license

1 requirements in this state is provided and accompanied, under
2 penalty of perjury, by a copy of the person's current
3 professional license and an affidavit of current compliance
4 with the background screening requirements.

5 (b) The person required to be screened has been
6 continuously employed in the same type of occupation for which
7 the person is seeking employment without a breach in service
8 which exceeds 180 days, and proof of compliance with the level
9 1 screening requirement which is no more than 2 years old is
10 provided. Proof of compliance shall be provided directly from
11 one employer or contractor to another, and not from the person
12 screened. Upon request, a copy of screening results shall be
13 provided by the employer retaining documentation of the
14 screening to the person screened.

15 (c) The person required to be screened is employed by
16 a corporation or business entity or related corporation or
17 business entity that owns, operates, or manages more than one
18 facility or agency licensed under chapter 400, and for whom a
19 level 1 screening was conducted by the corporation or business
20 entity as a condition of initial or continued employment.

21 (3) When an employee, volunteer, administrator, or
22 owner of a facility is the subject of ~~has~~ a confirmed report
23 of adult abuse, neglect, or exploitation, as defined in s.
24 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~
25 and the protective investigator knows that the individual is
26 an employee, volunteer, administrator, or owner of a facility,
27 the agency shall be notified of the confirmed report.

28 Section 45. Section 400.4176, Florida Statutes, is
29 amended to read:

30 400.4176 Notice of change of administrator.--If,
31 during the period for which a license is issued, the owner

1 changes administrators, the owner must notify the agency of
2 the change within 45 days ~~thereof~~ and ~~must~~ provide
3 documentation that the new administrator has completed the
4 applicable core educational requirements under s. 400.452.
5 Background screening shall be completed on any new
6 administrator ~~to establish that the individual is of suitable~~
7 ~~character~~ as specified in s. 400.4174 ~~ss. 400.411(2)(c) and~~
8 ~~400.456~~.

9 Section 46. Section 400.461, Florida Statutes, is
10 amended to read:

11 400.461 Short title; purpose.--

12 (1) This part, consisting of ss. 400.461-400.518 ~~ss.~~
13 ~~400.461-400.515~~, may be cited as the "Home Health Services
14 Act."

15 (2) The purpose of this part is to provide for the
16 licensure of every home health agency and to provide for the
17 development, establishment, and enforcement of basic standards
18 that will ensure the safe and adequate care of persons
19 receiving health services in their own homes.

20 Section 47. Section 400.462, Florida Statutes, is
21 amended to read:

22 400.462 Definitions.--As used in this part, the term:

23 (1) "Administrator" means a direct employee to whom
24 the governing body has delegated the responsibility for the
25 day-to-day administration of a home health agency. The
26 administrator must be a licensed physician, physician
27 assistant, or registered nurse licensed to practice in this
28 state, or an individual who has at least 1 year of supervisory
29 or administrative experience in home health care or in a
30 facility licensed under part II, part III, or part IV of this
31 chapter or under chapter 395. An employee of the governing

1 body may administer a maximum of five licensed home health
2 agencies operated by a related business entity and located
3 within one agency service district or within an immediately
4 contiguous county. An administrator shall designate, in
5 writing for each licensed entity, a qualified alternate
6 administrator to serve during the administrator's absence. If
7 the home health agency is licensed under this chapter and is
8 part of a retirement community that provides multiple levels
9 of care, an employee of the retirement community may
10 administer the home health agency and up to a maximum of four
11 entities licensed under this chapter which are located on the
12 same campus and owned, operated, or managed by the same
13 corporate entity.

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

16 (3)(1) "Certified nursing assistant" means any person
17 who has been issued a certificate under ~~after fulfilling the~~
18 ~~requirements of s. 400.211. A licensed home health agency or a~~
19 ~~licensed nurse registry shall validate that any certified~~
20 ~~nursing assistant is adequately trained to perform the tasks~~
21 ~~of a home health aide in the home setting.~~

22 (4) "Client" means an elderly, handicapped, or
23 convalescent individual who receives personal care services,
24 companion services, or homemaker services in the individual's
25 home or place of residence.

26 (5)(2) "Companion" ~~or "sitter"~~ means a person who
27 cares for an elderly, handicapped, or convalescent individual
28 and accompanies such individual on trips and outings and may
29 prepare and serve meals to such individual. A companion may
30 not provide hands-on personal care to the client.

31

1 ~~(6)(3)~~ "Department" means the Department of Children
2 and Family Health and Rehabilitative Services.

3 (7) "Director of nursing" means a registered nurse,
4 and direct employee of the home health agency, who is a
5 graduate of an approved school of nursing and is licensed in
6 this state; who has at least 1 year of supervisory experience
7 as a registered nurse and experience in a licensed home health
8 agency, a facility licensed under chapter 395, or a facility
9 licensed under part II, part III, or part VI of this chapter;
10 and who is responsible for overseeing the professional nursing
11 and home health aid delivery of services of the agency. An
12 employee may be the director of nursing of a maximum of five
13 licensed home health agencies operated by a related business
14 entity. If a home health agency is licensed under this chapter
15 and is part of a retirement community that provides multiple
16 levels of care, an employee of the retirement community may
17 serve as the director of nursing for the home health agency
18 and up to four additional entities licensed under this chapter
19 if the entities are located on the same campus and are owned,
20 operated, or managed by the same corporate entity. A director
21 of nursing shall designate, in writing for each home health
22 agency, a qualified alternate registered nurse to serve during
23 the absence of the director of nursing.

24 ~~(8)(4)~~ "Home health agency" means an organization that
25 provides home health services and staffing services ~~for health~~
26 ~~care facilities~~.

27 ~~(9)(5)~~ "Home health agency personnel" means persons
28 who are employed by or under contract with a home health
29 agency and enter the home or place of residence of patients at
30 any time in the course of their employment or contract.

31

1 (10) "Home health aide" means a person who provides
2 hands-on personal care, performs simple procedures as an
3 extension of therapy or nursing services, assists in
4 ambulation or exercises, or supervises the self-administration
5 of medications, for which the person has received training
6 established by the agency pursuant to s. 400.497(1).

7 ~~(11)(6)~~ "Home health services" means health and
8 medical services and medical supplies furnished by an
9 organization to an individual by home health agency personnel
10 or by others under arrangements with the agency, on a visiting
11 basis, in the individual's home or place of residence. The
12 term includes organizations that provide one or more of, but
13 is not limited to, the following:

14 (a) Nursing care.

15 (b) Physical, occupational, respiratory, or speech
16 therapy.

17 (c) Home health aide services.

18 (d) Dietetics and nutrition practice and nutrition
19 counseling ~~Nutritional guidance.~~

20 (e) Medical supplies, restricted to drugs and
21 biologicals prescribed by a physician.

22 (12) "Home infusion therapy" means the administration
23 of intravenous pharmacological or nutritional products to a
24 patient in the patient's home.

25 (13) "Home infusion therapy provider" means an
26 organization that employs, contracts with, or refers a
27 licensed professional who has received advanced training and
28 experience in intravenous infusion therapy and who administers
29 infusion therapy to a patient in the patient's home or place
30 of residence.

31

1 ~~(14)(7)~~ "Homemaker" means a person who performs
2 household chores that include housekeeping, meal planning and
3 preparation, shopping assistance, and routine household
4 activities for an elderly, handicapped, or convalescent
5 individual. A homemaker may not provide hands-on personal care
6 to a client.

7 ~~(15)(8)~~ "Nurse registry" means any person that
8 procures, offers, promises, or attempts to secure
9 health-care-related contracts for registered nurses, licensed
10 practical nurses, certified nursing assistants, home health
11 aides sitters, companions, or homemakers, who are compensated
12 by fees as independent contractors, including, but not limited
13 to, contracts for the provision of services to patients and
14 contracts to provide private duty or staffing services to
15 health care facilities licensed under chapter 395 or this
16 chapter or to other business entities.

17 ~~(16)~~ "Organization" means a corporation, government or
18 governmental subdivision or agency, partnership or
19 association, two or more persons having a joint or common
20 interest, or any other legal or commercial entity. The term
21 does not include an entity that provides services using only
22 volunteers.

23 ~~(17)(9)~~ "Patient" means any person who receives home
24 health services in his or her home or place of residence.

25 ~~(18)~~ "Personal care" includes, but is not limited to,
26 assisting a patient in the activities of daily living, such as
27 dressing, grooming, bathing, eating, or personal hygiene;
28 assisting in physical transfer and ambulation; and supervising
29 the self-administration of medications.

30 ~~(19)~~ "Physician" means a person licensed under chapter
31 458, chapter 459, chapter 460, or chapter 461.

1 ~~(20)~~(10) "Screening" means the assessment of the
2 background of home health agency personnel, nurse registry
3 personnel, and persons registered under s. 400.509 and
4 includes employment history checks, records checks of the
5 department's central abuse hotline under chapter 415 relating
6 to vulnerable adults, and statewide criminal records
7 correspondence checks through the Department of Law
8 Enforcement.

9 (21) "Skilled care" means nursing services or
10 therapeutic services delivered by a health care professional
11 who is licensed under chapter 464; part I, part III, or part V
12 of chapter 468; or chapter 486, and who is employed by or
13 under contract with a licensed home health agency or is
14 referred by a licensed nurse registry.

15 ~~(22)~~(11) "Staffing services" means services provided
16 to a ~~health care~~ facility or other business entity on a
17 temporary basis by licensed health care personnel, including
18 certified nursing assistants and home health aides who are
19 employed by or work under the auspices of a licensed home
20 health agency or who are registered with a licensed nurse
21 registry.

22 Section 48. Section 400.464, Florida Statutes, is
23 amended to read:

24 400.464 Home health agencies to be licensed;
25 expiration of license; exemptions; unlawful acts; penalties.--

26 (1) Any home health agency must be licensed by the
27 agency ~~for Health Care Administration~~ to operate in this
28 state. A license issued to a home health agency, unless
29 sooner suspended or revoked, expires 1 year after its date of
30 issuance. ~~However, any home health agency that is operated by~~
31 ~~the Federal Government is exempt from this part.~~

1 (2) If the licensed home health agency operates
2 related offices, each related office outside the county where
3 the main office is located must be separately licensed. The
4 counties where the related offices are operating must be
5 specified on the license in the main office.

6 (3) An entity that receives a certificate-of-need
7 exemption under s. 408.036 may request one home health agency
8 license to provide Medicare and non-Medicare home health
9 services to residents of the facility and non-Medicare home
10 health services to persons in one or more counties within the
11 agency service district where the main office of the home
12 health agency is located.

13 ~~(3) The furnishing of only home dialysis services,~~
14 ~~supplies, or equipment, or personal care services as provided~~
15 ~~by a community care for the elderly lead agency under s.~~
16 ~~430.205, or personal care services provided through a~~
17 ~~community care for disabled adults program under s. 410.604,~~
18 ~~is exempt from this part. The personal care services~~
19 ~~exemptions apply only to community care for the elderly lead~~
20 ~~agencies and community care for disabled adults programs that~~
21 ~~directly provide only personal care services to their clients~~
22 ~~and do not provide other home health services.~~

23 ~~(4) Any program offered through a county health~~
24 ~~department that makes home visits for the purpose of providing~~
25 ~~only environmental assessments, case management, health~~
26 ~~education, or personal care services is exempt from this part.~~

27 ~~(5)(a) It is unlawful for any person to offer or~~
28 ~~advertise home health services to the public unless he or she~~
29 ~~has a valid license under this part. It is unlawful for any~~
30 ~~holder of a license issued under this part to advertise or~~

31

1 ~~indicate to the public that it holds a home health agency~~
2 ~~license other than the one it has been issued.~~

3 ~~(b) A person who violates paragraph (a) is subject to~~
4 ~~an injunctive proceeding under s. 400.515. A violation of~~
5 ~~paragraph (a) is a deceptive and unfair trade practice and~~
6 ~~constitutes a violation of the Florida Deceptive and Unfair~~
7 ~~Trade Practices Act.~~

8 ~~(c) A person who violates paragraph (a) commits a~~
9 ~~misdemeanor of the second degree, punishable as provided in s.~~
10 ~~775.082 or s. 775.083. A person who commits a second or~~
11 ~~subsequent violation commits a misdemeanor of the first~~
12 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

13
14 ~~Each day of continuing violation constitutes a separate~~
15 ~~offense.~~

16 (4)(6) Any home infusion therapy provider shall be
17 licensed as a home health agency or nurse registry. Any home
18 infusion therapy provider currently authorized to receive
19 Medicare reimbursement under a DME - Part B Provider number
20 for the provision of infusion therapy shall be licensed as a
21 noncertified home health agency. Such a provider shall
22 continue to receive that specified Medicare reimbursement
23 without being certified so long as the reimbursement is
24 limited to those items authorized pursuant to the DME - Part B
25 Provider Agreement and the home health agency is licensed in
26 compliance with the other provisions of this part.

27 (5)(a) An organization may not provide, offer, or
28 advertise home health services to the public unless the
29 organization has a valid license or is specifically exempt
30 under this part. An organization that offers or advertises to
31 the public any service for which licensure or registration is

1 required under this part must include in the advertisement the
2 license number or registration number issued to the
3 organization by the agency. The agency shall assess a fine of
4 not less than \$100 to any licensee or registrant who fails to
5 include the license or registration number when submitting an
6 advertisement for publication, broadcast, or printing. The
7 holder of a license issued under this part may not advertise
8 or indicate to the public that it holds a home health agency
9 license or a nurse registry license other than the one it has
10 been issued.

11 (b) A person who violates the provisions of paragraph
12 (a) is subject to an injunctive proceeding under s. 400.515. A
13 violation of paragraph (a) is a deceptive and unfair trade
14 practice and constitutes a violation of the Florida Unfair and
15 Deceptive Trade Practices Act.

16 (c) A person who violates the provisions of paragraph
17 (a) commits a misdemeanor of the second degree, punishable as
18 provided in s. 775.082 or s. 775.083. A person who commits a
19 second or subsequent violation commits a misdemeanor of the
20 first degree, punishable as provided in s. 775.082 or s.
21 775.083. Each day of continuing violation constitutes a
22 separate offense.

23 (6) The following are exempt from the licensure
24 requirements of this part:

25 (a) A home health agency operated by the Federal
26 Government.

27 (b) The following home health services provided by a
28 state agency, either directly or through a contract:

29 1. Pursuant to s. 430.04(2)(f), services provided
30 through a program or contract of the Department of Elderly
31 Affairs and services provided through a program of community

1 care for disabled adults under s. 410.604. This exemption does
2 not entitle an individual to perform home health services
3 without the required professional license.

4 2. Any program offered through the Department of
5 Health, a community health center, or a rural health network
6 which furnishes home visits for the purpose of providing
7 environmental assessments, case management, health education,
8 personal care services, family planning, or followup treatment
9 or for the purpose of monitoring and tracking disease.

10 3. Services provided to persons who have developmental
11 disabilities, as defined in s. 393.063(12).

12 (c) A health care professional, whether or not
13 incorporated, who is licensed under chapter 458, chapter 459,
14 chapter 464, chapter 467, part I, part III, part V, or part X
15 of chapter 468, chapter 480, chapter 486, chapter 490, or
16 chapter 491, and who is acting alone within the scope of his
17 or her professional license to provide care to patients in
18 their homes.

19 (d) A home health aide, or certified nursing
20 assistant, who acts in his or her individual capacity within
21 the definitions and standards of his or her respective
22 occupation, and who provides hands-on care to patients in
23 their homes.

24 (e) Natural persons providing personal care services
25 to individuals or families in their place of residence. This
26 exemption allows each natural person to serve no more than 12
27 individuals or families in any calendar year without a home
28 health agency license. A natural person who provides personal
29 care services under this paragraph may not engage in paid
30 advertisement to the public as providing the services covered
31 under this exemption.

1 (f) The delivery of instructional services in home
2 dialysis and home dialysis supplies or equipment.

3 (g) The delivery of nursing home services, for which
4 the nursing home is licensed under part II, to serve its
5 residents in its facility.

6 (h) The delivery of assisted living facility services,
7 for which the assisted living facility is licensed under part
8 III, to serve its residents in its facility.

9 (i) The delivery of hospice services, for which the
10 hospice is licensed under part VI, to serve hospice patients
11 admitted to its service.

12 (j) A hospital that provides services for which it is
13 licensed under chapter 395 and birth centers under chapter
14 383.

15 (k) The delivery of community residential services,
16 for which the community residential home is licensed under
17 chapter 419, to serve the residents in its facility.

18 (l) A not-for-profit, community-based agency that
19 provides early intervention services to infants and toddlers.

20 (m) Certified rehabilitation agencies and
21 comprehensive outpatient rehabilitation facilities that are
22 certified under Title 18 of the Social Security Act.

23 (n) The delivery of adult family-care home services,
24 for which the adult family-care home is licensed under part
25 VII, to serve the residents in its facility.

26 Section 49. Section 400.471, Florida Statutes, is
27 amended to read:

28 400.471 Application for license; fee; provisional
29 license; temporary permit.--

30 (1) Application for an initial license or for renewal
31 of an existing license must be made under oath to the agency

1 ~~for Health Care Administration~~ on forms furnished by it and
2 must be accompanied by the appropriate license fee as provided
3 in subsection~~(8)~~~~(7)~~. The agency must take final action on
4 an initial licensure application within 90 ~~60~~ days after
5 receipt of all required documentation.

6 (2) The applicant must file with the application
7 satisfactory proof that the home health agency is in
8 compliance with this part and applicable rules, including:

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

12 (b) The number and discipline of professional staff to
13 be employed; and

14 (c) Proof of financial ability to operate. If the
15 applicant has applied for a certificate of need under ss.
16 408.031-408.045 within the preceding 12 months, the applicant
17 may submit the proof submitted during the certificate-of-need
18 process along with an attestation that there has been no
19 substantial change in the facts and circumstances underlying
20 the original submission.

21 (3) An applicant for initial licensure must
22 demonstrate financial ability to operate by submitting a
23 balance sheet and income and expense statement for the first 2
24 years of operation which provide evidence of having sufficient
25 assets, credit, and projected revenues to cover liabilities
26 and expenses. The applicant shall have demonstrated financial
27 ability to operate if the applicant's assets, credit, and
28 projected revenues meet or exceed projected liabilities and
29 expenses. All documents required under this subsection must
30 be prepared in accordance with generally accepted accounting
31

1 principles and the financial statement must be signed by a
2 certified public accountant.

3 (4) 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 of
7 the applicant, in accordance with the level 2 standards for
8 screening set forth in chapter 435. As used in this
9 subsection, the term "applicant" means the administrator, or a
10 similarly titled person who is responsible for the day-to-day
11 operation of the licensed home health agency, and the
12 financial officer, or similarly titled individual who is
13 responsible for the financial operation of the licensed home
14 health agency.

15 (b) The agency may require background screening for a
16 member of the board of directors of the licensee or an officer
17 or an individual owning 5 percent or more of the licensee if
18 the agency reasonably suspects that such individual has been
19 convicted of an offense prohibited under the level 2 standards
20 for screening set forth in chapter 435.

21 (c) Proof of compliance with the level 2 background
22 screening requirements of chapter 435 which has been submitted
23 within the previous 5 years in compliance with any other
24 health care or assisted living licensure requirements of this
25 state is acceptable in fulfillment of the requirements of
26 paragraph (a). Proof of compliance with background screening
27 which has been submitted within the previous 5 years to
28 fulfill the requirements of the Department of Insurance
29 pursuant to chapter 651 as part of an application for a
30 certificate of authority to operate a continuing care
31 retirement community is acceptable in fulfillment of the

1 Department of Law Enforcement and Federal Bureau of
2 Investigation background check.
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 abuse registry background check and the Department of Law
7 Enforcement background check, but the agency has not yet
8 received background screening results from the Federal Bureau
9 of Investigation. A standard license may be granted to the
10 licensee 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 licensee or
26 potential licensee from the Medicare or Medicaid programs.
27 Proof of compliance with the requirements for disclosure of
28 ownership and controlling interests under the Medicaid or
29 Medicare programs shall be accepted in lieu of this
30 submission.
31

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

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

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

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

1 2. Has been or is currently excluded, suspended,
2 terminated from or has involuntarily withdrawn from
3 participation in this state's Medicaid program, or the
4 Medicaid program of any other state, or from participation in
5 the Medicare program or any other governmental or private
6 health care or health insurance program.

7 (i) An application for license renewal must contain
8 the information required under paragraphs (e) and (f).

9 (j) A provisional license may be issued for a period
10 not to exceed one year to any new home health agency or a home
11 health agency that is in substantial compliance with this part
12 and rules adopted thereunder.

13 ~~(5)(4)~~ ~~The home health agency must also obtain and~~
14 ~~maintain the following liability insurance coverages, in an-~~
15 ~~Proof of liability insurance, as defined in s. 624.605, must~~
16 ~~be submitted with the application. The Agency for Health Care~~
17 ~~Administration shall set the required amounts of liability~~
18 ~~insurance by rule, but the required amount of must not be less~~
19 ~~than \$250,000 per claim, and the home health agency must~~
20 ~~submit proof of coverage with an initial application for~~
21 ~~licensure and with each annual application for license~~
22 ~~renewal:~~

23 (a) Malpractice insurance, as defined in s.
24 624.605(1)(k); and

25 (b) Liability insurance, as defined in s.
26 624.605(1)(b).

27 ~~(6)(5)~~ ~~Ninety Sixty~~ days before the expiration date,
28 an application for renewal must be submitted to the agency ~~for~~
29 ~~Health Care Administration~~ under oath on forms furnished by
30 it, and a license must be renewed if the applicant has met the
31 requirements established under this part and applicable rules.

1 The home health agency must file with the application
2 satisfactory proof that it is in compliance with this part and
3 applicable rules. If there is evidence of financial
4 instability, the home health agency must submit satisfactory
5 proof of its financial ability to comply with the requirements
6 of this part.

7 (7)(6) When transferring the ownership of a home
8 health agency, the transferee must submit an application for a
9 license at least 60 days before the effective date of the
10 transfer. If the home health agency is being leased, a copy
11 of the lease agreement must be filed with the application. A
12 transfer to an immediate family member or member of the
13 transferor's household following a conviction, assessment, or
14 exclusion from Medicare or Medicaid may not be approved.

15 (8)(7) The license fee and annual renewal fee required
16 of a home health agency are ~~is~~ nonrefundable. The agency ~~for~~
17 ~~Health Care Administration~~ shall set the fees in an amount
18 that is sufficient to cover its costs in carrying out its
19 responsibilities under this part, but not to exceed \$1,000.
20 However, state, county, or municipal governments applying for
21 licenses under this part are exempt from the payment of
22 license fees. All fees collected under this part must be
23 deposited in the Health Care Trust Fund for the administration
24 of this part.

25 (9)(8) The license must be displayed in a conspicuous
26 place in the administrative office of the home health agency
27 and is valid only while in the possession of the agency person
28 to which it is issued. The license may not be sold, assigned,
29 or otherwise transferred, voluntarily or involuntarily, and is
30 valid only for the home health agency and location for which
31 originally issued.

1 ~~(10)(9)~~ A home health agency against whom a revocation
2 or suspension proceeding is pending at the time of license
3 renewal may be issued a provisional license effective until
4 final disposition by the agency ~~for Health Care Administration~~
5 of such proceedings. If judicial relief is sought from the
6 final disposition, the court that has jurisdiction may issue a
7 temporary permit for the duration of the judicial proceeding.

8 ~~(11)(10)~~ The agency may ~~department shall~~ not issue a
9 license designated as certified to a home health agency that
10 ~~which~~ fails to receive a certificate of need under ~~the~~
11 provisions of ss. 408.031-408.045 and that fails to satisfy
12 the requirements of a Medicare certification survey from the
13 agency.

14 (12) The agency may not issue a license to a home
15 health agency that has any unpaid fines assessed under this
16 part.

17 Section 50. Section 400.474, Florida Statutes, is
18 amended to read:

19 400.474 Denial, suspension, revocation of license;
20 injunction; grounds.--

21 (1) The agency ~~for Health Care Administration~~ may
22 deny, revoke, or suspend a license, or impose an
23 administrative fine in the manner provided in chapter 120, or
24 initiate injunctive proceedings under s. 400.515.

25 (2) Any of the following actions by a home health
26 agency ~~or its employee~~ is grounds for disciplinary action by
27 the agency ~~for Health Care Administration~~:

28 (a) Violation of this part or of applicable rules.

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

31

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

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

22 (c) If any home health agency meets the criteria in
23 paragraph (a) or paragraph (b) and that home health agency has
24 received any government reimbursement for services provided by
25 an unlicensed home health agency, the agency shall make a
26 fraud referral to the appropriate government reimbursement
27 program.

28 (4) The agency may deny, revoke, or suspend the
29 license of a home health agency, or may impose on a home
30 health agency administrative fines not to exceed the aggregate
31 sum of \$5,000, if:

1 (a) A home health agency fails to provide at least one
2 of the services listed in s. 400.462(11) directly to patients
3 for a period of 6 consecutive months.

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

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

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

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

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

26 Section 51. Section 400.484, Florida Statutes, is
27 amended to read:

28 400.484 Right of inspection.--

29 (1) Any duly authorized officer or employee of the
30 agency ~~for Health Care Administration~~ may make such
31 inspections and investigations as are necessary in order to

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

1 patients, until the factors causing the deficiency have been
2 corrected.

3 (c) A class III deficiency is any act, omission, or
4 practice that has an indirect adverse effect on the health,
5 safety, or security of a patient. Upon finding an uncorrected
6 or repeated class III deficiency, the agency may impose an
7 administrative fine not to exceed \$500 for each occurrence and
8 each day that the uncorrected or repeated deficiency exists.

9 (d) A class IV deficiency is any act, omission, or
10 practice related to a required report, form, or document which
11 does not have the potential to negatively affect a patient. A
12 class IV deficiency is a deficiency that the agency determines
13 does not threaten the health, safety, or security of a
14 patient. Upon finding an uncorrected or repeated class IV
15 deficiency, the agency may impose an administrative fine not
16 to exceed \$200 for each occurrence and each day that the
17 uncorrected or repeated deficiency exists.

18 Section 52. Section 400.487, Florida Statutes, is
19 amended to read:

20 400.487 Patient assessment; establishment and review
21 of plan of care; provision of services.--

22 (1) The home health agency providing skilled care ~~and~~
23 ~~treatment~~ must make an assessment of the patient's needs
24 within 48 hours after the start of services.

25 (2) The attending physician for a patient who is to
26 receive skilled ~~receiving care or treatment provided by a~~
27 ~~licensed nurse or by a physical, occupational, or speech~~
28 ~~therapist~~ must establish treatment orders ~~a plan of care for~~
29 ~~the patient on behalf of the home health agency that provides~~
30 ~~services to the patient.~~ The original ~~plan of treatment~~
31 orders must be signed by the physician within 21 days after

1 the start of care and reviewed, at least every 62 days or more
2 frequently if the patient's illness requires, by the physician
3 in consultation with home health agency personnel that provide
4 services to the patient. Based on the assessment and the
5 treatment orders, the home health agency shall prepare a plan
6 of care that describes the services to be provided, the
7 frequency of service provision, and any other information
8 required by rule. The treatment orders and plan of care may be
9 incorporated into one document.

10 (3) If a client is accepted for home health aide
11 services, homemaker services, or companion services and such
12 services do not require a physician's order, the home health
13 agency shall establish a plan for the provision of services
14 and maintain a record of the services provided.

15 ~~(4)~~(3) Each patient or client has the right to be
16 informed of and to participate in the planning of his or her
17 care. Each patient must be provided, upon request, a copy of
18 the plan of care or plan for the provision of services
19 established and maintained for that patient or client by the
20 home health agency.

21 ~~(4)~~ ~~Home health services that are provided to a~~
22 ~~patient must be evaluated in the patient's home by a physician~~
23 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
24 ~~chapter 461 or by a registered nurse licensed under chapter~~
25 ~~464 as frequently as necessary to assure safe and adequate~~
26 ~~care, but not less frequently than once every 62 days.~~

27 (5) In the case of nursing services delivered by a
28 home health agency to a patient, the home health agency to
29 which a patient has been admitted for care must provide the
30 initial admission visit, all service evaluation visits, and
31 the discharge visit by qualified personnel who are on the

1 payroll of, and to whom an Internal Revenue Service W-2 form
2 will be issued by, the home health agency at least one home
3 health service to patients for whom it has agreed to provide
4 care. Services provided by others under contractual
5 arrangements to a home health agency ~~agency's patients~~ must be
6 monitored and managed ~~controlled~~ by the admitting home health
7 agency. The home health agency is fully responsible for
8 ensuring that all care provided through its employees or
9 contract staff is delivered in accordance with this part and
10 applicable rules.

11 (6) The skilled care ~~services~~ provided by a home
12 health agency, directly or under contract, must be supervised
13 and coordinated in accordance with the plan of care.

14 Section 53. Section 400.491, Florida Statutes, is
15 amended to read:

16 400.491 Clinical records.--

17 (1) The home health agency must maintain for each
18 patient who receives skilled care a clinical record that
19 includes ~~the services the home health agency provides directly~~
20 ~~and those provided through arrangement with another health~~
21 ~~care provider, except for those services provided by persons~~
22 ~~referred under s. 400.509.~~ Such records must contain
23 pertinent past and current medical, nursing, social and other
24 therapeutic information, the plan of treatment, and other such
25 information as is necessary for the safe and adequate care of
26 the patient. When home health services are terminated, the
27 record must show the date and reason for termination. Such
28 records are considered patient records under s. 455.667
29 ~~400.241~~, and must be maintained by the home health agency for
30 5 years following termination of services. If a patient
31 transfers to another home health agency, a copy of his or her

1 record must be provided to the other home health agency upon
2 request.

3 (2) The home health agency must maintain a plan for
4 service provision for each client who receives nonskilled
5 care. Records of the client's plan must be maintained by the
6 home health agency for 1 year following termination of the
7 services.

8 Section 54. Section 400.497, Florida Statutes, is
9 amended to read:

10 400.497 Rules establishing minimum standards.--The
11 agency ~~for Health Care Administration~~ shall adopt, publish,
12 and enforce rules to implement this part, including, as
13 applicable, ss. 400.506 and 400.509, which ~~must~~ provide
14 reasonable and fair minimum standards relating to:

15 ~~(1) Scope of home health services to be provided.~~

16 (1)(2) The qualifications, and minimum training
17 requirements, and supervision requirements of all home health
18 agency personnel, including aides. The agency shall allow
19 shared staffing if the home health agency is part of a
20 retirement community that provides multiple levels of care, is
21 located on one campus, is licensed under this chapter, and
22 otherwise meets the requirements of law and rule.

23 (2)(3) Requirements for prospective employees

24 ~~Procedures for maintaining a record of the employment history~~
25 ~~of all home health agency personnel. A home health agency~~
26 ~~must require its personnel to submit an employment history to~~
27 ~~the home health agency, and verification of it must verify the~~
28 ~~employment history unless through diligent efforts such~~
29 ~~verification is not possible. The agency for Health Care~~
30 ~~Administration shall prescribe by rule the minimum~~
31 requirements for establishing that diligent efforts have been

1 made. ~~The administrator of a home health agency must review~~
2 ~~the employment history and references of home health agency~~
3 ~~personnel and applicants for employment. The Agency for~~
4 ~~Health Care Administration must review the employment history~~
5 ~~and references of each administrator of a home health agency.~~
6 There is no monetary liability on the part of, and no cause of
7 action for damages arises against, a former employer of a
8 prospective employee of or prospective independent contractor
9 with a licensed home health agency who reasonably and in good
10 faith communicates his or her honest opinions about the former
11 employee's job performance. This subsection does not affect
12 the official immunity of an officer or employee of a public
13 corporation.

14 (3)~~(4)~~ Licensure application and renewal.

15 (4)~~(5)~~ The administration of the home health agency,
16 including requirements for onsite and electronic accessibility
17 of supervisory personnel.

18 (5)~~(6)~~ Procedures for administering drugs and
19 biologicals.

20 (6)~~(7)~~ Procedures for maintaining patients'~~patient~~
21 records.

22 (7)~~(8)~~ Provision of ~~Ensuring that the~~ home health
23 services ~~provided~~ by a home health agency ~~are~~ in accordance
24 with the plan of care treatment established for each patient
25 for whom a plan of care is required.

26 (8)~~(9)~~ Geographic service areas.

27 (9)~~(10)~~ Standards for contractual arrangements for the
28 provision of home health services by providers not employed by
29 the home health agency providing for the patient's care and
30 treatment.

31

1 Section 55. Subsection (1) and present subsections (9)
2 and (12) of section 400.506, Florida Statutes, are amended,
3 subsections (2) through (16) are renumbered as subsections (3)
4 through (17), respectively, and a new subsection (2) is added
5 to that section, to read:

6 400.506 Licensure of nurse registries; requirements;
7 penalties.--

8 (1) A nurse registry is exempt from the licensing
9 requirements of a home health agency, but must be licensed as
10 a nurse registry. Each operational site of a nurse registry
11 must be licensed unless the nurse registry operates more than
12 one site within a county. If the nurse registry operates more
13 than one site within a county, only one license is required
14 for the sites within that county.

15 (2) 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 managing employee, or other similarly
21 titled individual who is responsible for the daily operation
22 of the nurse registry, and of the financial officer, or other
23 similarly titled individual who is responsible for the
24 financial operation of the registry, including billings for
25 patient care and services. The applicant shall comply with
26 the procedures for level 2 background screening as set forth
27 in chapter 435.

28 (b) The agency may require background screening of any
29 other individual who is an applicant if the agency has
30 probable cause to believe that he or she has been convicted of
31

1 a crime or has committed any other offense prohibited under
2 the level 2 standards for screening set forth in chapter 435.

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

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

29 (e) Each applicant must submit to the agency, with its
30 application, a description and explanation of any exclusions,
31 permanent suspensions, or terminations of the applicant from

1 the Medicare or Medicaid programs. Proof of compliance with
2 the requirements for disclosure of ownership and controlling
3 interests under the Medicaid or Medicare programs may be
4 accepted in lieu of this submission.

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

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

30 (h) The agency may deny or revoke the license if any
31 applicant:

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 programs 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 ~~(10)(9)~~(a) A nurse registry may refer for contract in
11 private residences registered nurses and licensed practical
12 nurses registered and licensed under chapter 464, certified
13 nursing assistants certified under s. 400.211, home health
14 aides who present documented proof of successful completion of
15 the training required by rule of the agency, and sitters,
16 companions, or homemakers for the purposes of providing those
17 services authorized under s. 400.509(1). A person referred by
18 a nurse registry must provide current documentation that he or
19 she is free from any communicable disease.

20 (b) A certified nursing assistant or home health aide
21 may be referred for a contract to provide care to a patient in
22 his or her home only if that patient is under a physician's
23 care. A certified nursing assistant or home health aide
24 referred for contract in a private residence shall be limited
25 to assisting a patient with bathing, dressing, toileting,
26 grooming, eating, physical transfer, and those normal daily
27 routines the patient could perform for himself or herself were
28 he or she physically capable. A certified nursing assistant
29 or home health aide may not provide medical or other health
30 care services that require specialized training and that may
31 be performed only by licensed health care professionals. The

1 nurse registry shall obtain the name and address of the
2 attending physician and send written notification to the
3 physician within 48 hours after a contract is concluded that a
4 certified nursing assistant or home health aide will be
5 providing care for that patient.

6 (c) A registered nurse shall make monthly visits to
7 the patient's home to assess the patient's condition and
8 quality of care being provided by the certified nursing
9 assistant or home health aide. Any condition which in the
10 professional judgment of the nurse requires further medical
11 attention shall be reported to the attending physician and the
12 nurse registry. The assessment shall become a part of the
13 patient's file with the nurse registry and may be reviewed by
14 the Agency for Health Care Administration during their survey
15 procedure.

16 ~~(d) In order to refer for contract in private~~
17 ~~residences a certified nursing assistant or any person~~
18 ~~specified in s. 400.509(1), the nurse registry and such person~~
19 ~~registered with the nurse registry must also be registered~~
20 ~~under s. 400.509. Any person registered as an independent~~
21 ~~contractor with a nurse registry for the purpose of providing~~
22 ~~services authorized under s. 400.509(1) on or before October~~
23 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
24 ~~as such person remains continuously registered with that nurse~~
25 ~~registry.~~

26 (13)~~(12)~~ Each nurse registry must comply with the
27 procedures set forth in s. 400.497(2)~~(3)~~ for maintaining
28 records of the employment history of all persons referred for
29 contract and is subject to the standards and conditions set
30 forth in s. 400.512. However, an initial screening may not be
31

1 required for persons who have been continuously registered
2 with the nurse registry since September 30, 1990.

3 Section 56. Subsections (1) and (2) and present
4 subsections (4) and (5) of section 400.509, Florida Statutes,
5 are amended, subsections (3) through (13) are renumbered as
6 subsections (4) through (14), respectively, and a new
7 subsection (3) is added to that section, to read:

8 400.509 Registration of particular service providers
9 exempt from licensure; certificate of registration; regulation
10 of registrants.--

11 (1) Any person who ~~that~~ provides domestic maid
12 services, ~~sitter services~~, companion services, or homemaker
13 services and does not provide a home health service to a
14 person is exempt from licensure under this part. However, any
15 person who ~~that~~ provides ~~sitter services for adults~~, companion
16 services, or homemaker services must register with the Agency
17 for Health Care Administration. This section does not apply to
18 an individual who provides services under a contract with the
19 Department of Children and Family Services and who has
20 undergone screening under s. 393.0655.

21 (2) Registration consists of annually filing with the
22 agency ~~for Health Care Administration~~, under oath, on forms
23 provided by it, the following information:

24 (a) The name, address, date of birth, and social
25 security number of the individual, ~~or the name and address of~~
26 ~~the person~~, providing the service.

27 (b) If the registrant is a firm or partnership, the
28 name, address, date of birth, and social security number of
29 every member.

30 (c) If the registrant is a corporation or association,
31 its name and address, the name, address, date of birth, and

1 social security number of each of its directors and officers,
2 and the name and address of each person having at least a
3 5-percent ~~10-percent~~ interest in the corporation or
4 association.

5 (d) The name, address, date of birth, and social
6 security number of each person employed or under contract.

7 (3) Each applicant for registration must comply with
8 the 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 1 standards for screening set forth
12 in chapter 435, of the individual providing the service. If
13 the applicant is a firm or partnership, the agency shall
14 require background screening of the managing employee, or
15 other similarly titled individual who is responsible for the
16 operation of the entity, and of the financial officer, or
17 other similarly titled individual who is responsible for the
18 financial operation of the entity, including billings for
19 client services, in accordance with level 2 standards for
20 background screening as set forth in chapter 435.

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 healthcare or assisted living licensure requirements of this
30 state is acceptable in fulfillment of the requirements of
31 paragraph (a).

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

15 (g) A registration may not be granted to an applicant
16 if the applicant or managing employee has been found guilty
17 of, 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 the registration if
23 any 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 programs as set forth in
30 paragraph (e).

31

1 (i) An application for registration renewal must
2 contain the information required under paragraphs (e) and (f).

3 ~~(5)(4)~~ Each registrant must establish the employment
4 history of persons employed or under contract having contact
5 at any time with clients ~~patients~~ in their homes by:

6 (a) Requiring persons employed or under contract to
7 submit an employment history to the registrant; and

8 (b) Verifying the employment history, unless through
9 diligent efforts such verification is not possible. The
10 agency ~~for Health Care Administration~~ shall prescribe by rule
11 the minimum requirements for establishing that diligent
12 efforts have been made.

13
14 There is no monetary liability on the part of, and no cause of
15 action for damages arises against, a former employer of a
16 prospective employee of or prospective independent contractor
17 with a registrant who reasonably and in good faith
18 communicates his or her honest opinions about the former
19 employee's job performance. This subsection does not affect
20 the official immunity of an officer or employee of a public
21 corporation.

22 ~~(6)(5)~~ On or before the first day on which services
23 are provided to a client ~~patient~~, any registrant under this
24 part must inform the client ~~patient~~ and his or her immediate
25 family, if appropriate, of the right to report abusive,
26 neglectful, or exploitative practices. The statewide
27 toll-free telephone number for the central abuse registry must
28 be provided to patients in a manner that is clearly legible
29 and must include the words: "To report abuse, neglect, or
30 exploitation, please call toll-free ...(phone number)...."
31

1 Registrants must establish appropriate policies and procedures
2 for providing such notice to clients ~~patients~~.

3 Section 57. Section 400.512, Florida Statutes, is
4 amended to read:

5 400.512 Screening of home health agency personnel;
6 nurse registry personnel; and ~~sitters, companions, and~~
7 homemakers.--The agency ~~for Health Care Administration~~ shall
8 require employment, or contractor, screening as provided in
9 chapter 435, using the level 1 standards for screening set
10 forth in that chapter, for home health agency personnel;
11 persons referred for contract employment by nurse registries;
12 and persons employed or referred by ~~sitter, companion, or~~
13 homemaker services registered under s. 400.509.

14 (1) The agency ~~for Health Care Administration~~ may
15 grant exemptions from disqualification from employment under
16 this section as provided in s. 435.07.

17 (2) The administrator of each home health agency,
18 nurse registry, or ~~sitter, companion, or~~ homemaker service
19 registered under s. 400.509 must sign an affidavit annually,
20 under penalty of perjury, stating that all personnel hired, or
21 registered, on or after October 1, 1994 ~~1989~~, who enter the
22 home of a patient or client ~~in the capacity of their service~~
23 capacity employment have been screened and that its remaining
24 personnel have worked for the home health agency or
25 registrant, or have been registered with the nurse registry,
26 continuously since before October 1, 1994 ~~1989~~.

27 (3) As a prerequisite to operating as a home health
28 agency, or ~~sitter, companion, or~~ homemaker service under s.
29 400.509, the administrator must submit to the agency his or
30 her ~~for Health Care Administration~~ their name and any other
31 information necessary to conduct a complete screening

1 according to this section. The agency ~~for Health Care~~
2 ~~Administration~~ shall submit the information to the Department
3 of Law Enforcement and the department's abuse hotline for
4 state processing. The agency ~~for Health Care Administration~~
5 shall review the record of the administrator with respect to
6 the offenses specified in this section and shall notify the
7 owner of its findings. If disposition information is missing
8 on a criminal record, the administrator, upon request of the
9 agency ~~for Health Care Administration~~, must obtain and supply
10 within 30 days the missing disposition information to the
11 agency ~~for Health Care Administration~~. Failure to supply
12 missing information within 30 days or to show reasonable
13 efforts to obtain such information will result in automatic
14 disqualification.

15 (4) Proof of compliance with the screening
16 requirements of chapter 435 shall be accepted in lieu of the
17 requirements of this section if the ~~provided that such person~~
18 ~~has been continuously employed, or registered, without a~~
19 ~~breach in service that exceeds 180 days, the proof of~~
20 ~~compliance is not more than 2 years old, and the person has~~
21 ~~been screened through the central abuse registry and tracking~~
22 ~~system of the department and by the Department of Law~~
23 ~~Enforcement. An employer or registry shall directly provide~~
24 ~~proof of compliance to another home health agency or registry,~~
25 ~~and a potential home health agency or registry may not accept~~
26 ~~any proof of compliance directly from the person who requires~~
27 ~~screening.~~ Proof of compliance with the screening requirements
28 of this section shall be provided upon request to the person
29 screened by the home health agencies; nurse registries; or
30 ~~sitter, companion, or homemaker services registered under s.~~
31 400.509.

1 (5) There is no monetary liability on the part of, and
2 no cause of action for damages arises against, a licensed home
3 health agency, licensed nurse registry, or ~~sitter,~~ companion,
4 or homemaker service registered under s. 400.509, that, upon
5 notice of a confirmed report of adult abuse, neglect, or
6 exploitation ~~under paragraph (2)(b),~~ terminates the employee,
7 or removes from the licensed nurse registry the person,
8 against whom the report was issued, whether or not the
9 employee or contractor has filed for an exemption with the
10 agency in accordance with chapter 435 for Health Care
11 ~~Administration under subparagraph (3)(a)5.~~ and whether or not
12 the time for filing has expired.

13 (6) The costs of processing the statewide
14 correspondence criminal records checks and the search of the
15 department's central abuse hotline must be borne by the home
16 health agency; the nurse registry; or the ~~sitter,~~ companion,
17 or homemaker service registered under s. 400.509, or by the
18 person being screened, at the discretion of the home health
19 agency, nurse registry, or s. 400.509 registrant.

20 ~~(7) The Agency for Health Care Administration; the~~
21 ~~home health agency; nurse registry; or sitter, companion, or~~
22 ~~homemaker service registered under s. 400.509 may not use the~~
23 ~~criminal records, juvenile records, or central abuse hotline~~
24 ~~information of a person for any purpose other than determining~~
25 ~~whether that person meets minimum standards of good moral~~
26 ~~character for home health agency personnel. The criminal~~
27 ~~records, juvenile records, or central abuse hotline~~
28 ~~information obtained by the Agency for Health Care~~
29 ~~Administration; home health agency; nurse registry; or sitter,~~
30 ~~companion, or homemaker service for determining the moral~~
31 ~~character of such personnel are confidential and exempt from~~

1 ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~
2 ~~State Constitution.~~

3 ~~(8)(a) It is a misdemeanor of the first degree,~~
4 ~~punishable under s. 775.082 or s. 775.083, for any person~~
5 ~~willfully, knowingly, or intentionally to:~~

6 ~~1. Fail, by false statement, misrepresentation,~~
7 ~~impersonation, or other fraudulent means, to disclose in any~~
8 ~~application for voluntary or paid employment a material fact~~
9 ~~used in making a determination as to such person's~~
10 ~~qualifications to be an employee under this section;~~

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

15 ~~3. Use information from the criminal records or~~
16 ~~central abuse hotline obtained under this section for any~~
17 ~~purpose other than screening that person for employment as~~
18 ~~specified in this section or release such information to any~~
19 ~~other person for any purpose other than screening for~~
20 ~~employment under this section.~~

21 ~~(b) It is a felony of the third degree, punishable~~
22 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
23 ~~willfully, knowingly, or intentionally to use information from~~
24 ~~the juvenile records of a person obtained under this section~~
25 ~~for any purpose other than screening for employment under this~~
26 ~~section.~~

27 Section 58. Subsection (2) of section 400.555, Florida
28 Statutes, is amended to read:

29 400.555 Application for license.--

30 (2) The applicant for licensure must furnish:

31

- 1 (a) A description of the physical and mental
2 capabilities and needs of the participants to be served and
3 the availability, frequency, and intensity of basic services
4 and of supportive and optional services to be provided;
- 5 (b) Satisfactory proof of financial ability to operate
6 and conduct the center in accordance with the requirements of
7 this part, which must include, in the case of an initial
8 application, a 1-year operating plan and proof of a 3-month
9 operating reserve fund; and
- 10 (c) Proof of adequate liability insurance coverage.
- 11 (d) Proof of compliance with level 2 background
12 screening as required under s. 400.5572.
- 13 (e) A description and explanation of any exclusions,
14 permanent suspensions, or terminations of the application from
15 the Medicare or Medicaid programs. Proof of compliance with
16 requirements for disclosure of ownership and controlling
17 interests under the Medicare or Medicaid programs shall be
18 accepted in lieu of this submission.
- 19 Section 59. Subsection (2) of section 400.556, Florida
20 Statutes, is amended to read:
- 21 400.556 Denial, suspension, revocation of license;
22 administrative fines; investigations and inspections.--
- 23 (2) Each of the following actions by the owner of an
24 adult day care center or by its operator or employee is a
25 ground for action by the agency against the owner of the
26 center or its operator or employee:
- 27 (a) An intentional or negligent act materially
28 affecting the health or safety of center participants.
- 29 (b) A violation of this part or of any standard or
30 rule under this part.
- 31

1 (c) A failure of persons subject to level 2 background
2 screening under s. 400.4174(1) to meet the screening standards
3 of s. 435.04, or the retention by the center of an employee
4 subject to level 1 background screening standards under s.
5 400.4174(2) who does not meet the screening standards of s.
6 435.03 and for whom exemptions from disqualification have not
7 been provided by the agency.~~A confirmed report of adult~~
8 ~~abuse, neglect, or exploitation, as defined in s. 415.102, or~~
9 ~~of child abuse or neglect, as defined in s. 415.503, which~~
10 ~~report has been upheld following a hearing held pursuant to~~
11 ~~chapter 120 or a waiver of such hearing.~~

12 (d) Failure to follow the criteria and procedures
13 provided under part I of chapter 394 relating to the
14 transportation, voluntary admission, and involuntary
15 examination of center participants.

16 (e) Multiple or repeated violations of this part or of
17 any standard or rule adopted under this part.

18 (f) Exclusion, permanent suspension, or termination of
19 the owner, if an individual, officer, or board member of the
20 adult day care center, or if the owner is a firm, corporation,
21 partnership, or association, or of any person owning 5 percent
22 or more of the center, from the Medicare or Medicaid program.

23 Section 60. Subsection (1) of section 400.557, Florida
24 Statutes, is amended to read:

25 400.557 Expiration of license; renewal; conditional
26 license or permit.--

27 (1) A license issued for the operation of an adult day
28 care center, unless sooner suspended or revoked, expires 2
29 years after the date of issuance. The agency shall notify a
30 licensee by certified mail, return receipt requested, at least
31 120 days before the expiration date that license renewal is

1 required to continue operation. At least 90 days prior to the
2 expiration date, an application for renewal must be submitted
3 to the agency. A license shall be renewed, upon the filing of
4 an application on forms furnished by the agency, if the
5 applicant has first met the requirements of this part and of
6 the rules adopted under this part. The applicant must file
7 with the application satisfactory proof of financial ability
8 to operate the center in accordance with the requirements of
9 this part and in accordance with the needs of the participants
10 to be served and an affidavit of compliance with the
11 background screening requirements of s. 400.5572.

12 Section 61. Section 400.5572, Florida Statutes, is
13 created to read:

14 400.5572 Background screening.--

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

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

21 2. An officer or board member if the owner of the
22 adult day care center is a firm, corporation, partnership, or
23 association, or any person owning 5 percent or more of the
24 facility, if the agency has probable cause to believe that
25 such person has been convicted of any offense prohibited by s.
26 435.04. For each officer, board member, or person owning 5
27 percent or more who has been convicted of any such offense,
28 the facility shall submit to the agency a description and
29 explanation of the conviction at the time of license
30 application. This subparagraph does not apply to a board
31 member of a not-for-profit corporation or organization if the

1 board member serves solely in a voluntary capacity, does not
2 regularly take part in the day-to-day operational decisions of
3 the corporation or organization, receives no remuneration for
4 his or her services, and has no financial interest and has no
5 family members with a financial interest in the corporation or
6 organization, provided that the board member and facility
7 submit a statement affirming that the board member's
8 relationship to the facility satisfies the requirements of
9 this subparagraph.

10 (b) Proof of compliance with level 2 screening
11 standards which has been submitted within the previous 5 years
12 to meet any facility or professional licensure requirements of
13 the agency or the Department of Health satisfies the
14 requirements of this subsection.

15 (c) The agency may grant a provisional license to an
16 adult day care center applying for an initial license when
17 each individual required by this subsection to undergo
18 screening has completed the abuse registry and Department of
19 Law Enforcement background checks, but has not yet received
20 results from the Federal Bureau of Investigation, or when a
21 request for an exemption from disqualification has been
22 submitted to the agency pursuant to s. 435.07, but a response
23 has not been issued.

24 (2) The owner or administrator of an adult day care
25 center must conduct level 1 background screening as set forth
26 in chapter 435 on all employees hired on or after October 1,
27 1998, who provide basic services or supportive and optional
28 services to the participants. Such persons satisfy this
29 requirement if:

30 (a) Proof of compliance with level 1 screening
31 requirements obtained to meet any professional license

1 requirements in this state is provided and accompanied, under
2 penalty of perjury, by a copy of the person's current
3 professional license and an affidavit of current compliance
4 with the background screening requirements.

5 (b) The person required to be screened has been
6 continuously employed, without a breach in service that
7 exceeds 180 days, in the same type of occupation for which the
8 person is seeking employment and provides proof of compliance
9 with the level 1 screening requirement which is no more than 2
10 years old. Proof of compliance must be provided directly from
11 one employer or contractor to another, and not from the person
12 screened. Upon request, a copy of screening results shall be
13 provided to the person screened by the employer retaining
14 documentation of the screening.

15 (c) The person required to be screened is employed by
16 a corporation or business entity or related corporation or
17 business entity that owns, operates, or manages more than one
18 facility or agency licensed under chapter 400, and for whom a
19 level 1 screening was conducted by the corporation or business
20 entity as a condition of initial or continued employment.

21 (3) When an employee, volunteer, operator, or owner of
22 an adult day care center is the subject of a confirmed report
23 of adult abuse, neglect, or exploitation, as defined in s.
24 415.102, and the protective investigator knows that the
25 individual is an employee, volunteer, operator, or owner of a
26 center, the agency shall be notified of the confirmed report.

27 Section 62. Section 400.606, Florida Statutes, is
28 amended to read:

29 400.606 License; application; renewal; conditional
30 license or permit; certificate of need.--

31

- 1 (1) A license application must be filed on a form
2 provided by the agency and must be accompanied by the
3 appropriate license fee as well as satisfactory proof that the
4 hospice is in compliance with this part and any rules adopted
5 by the department and proof of financial ability to operate
6 and conduct the hospice in accordance with the requirements of
7 this part. The initial application must be accompanied by a
8 plan for the delivery of home, residential, and homelike
9 inpatient hospice services to terminally ill persons and their
10 families. Such plan must contain, but need not be limited to:
11 (a) The estimated average number of terminally ill
12 persons to be served monthly.
13 (b) The geographic area in which hospice services will
14 be available.
15 (c) A listing of services which are or will be
16 provided, either directly by the applicant or through
17 contractual arrangements with existing providers.
18 (d) Provisions for the implementation of hospice home
19 care within 3 months after licensure.
20 (e) Provisions for the implementation of hospice
21 homelike inpatient care within 12 months after licensure.
22 (f) The number and disciplines of professional staff
23 to be employed.
24 (g) The name and qualifications of any existing or
25 potential contractee.
26 (h) A plan for attracting and training volunteers.
27 (i) The projected annual operating cost of the
28 hospice.
29 (j) A statement of financial resources and personnel
30 available to the applicant to deliver hospice care.
31

1 If the applicant is an existing health care provider, the
2 application must be accompanied by a copy of the most recent
3 profit-loss statement and, if applicable, the most recent
4 licensure inspection report.

5 (2) Each applicant must submit to the agency with its
6 application a description and explanation of any exclusions,
7 permanent suspensions, or terminations from the Medicaid or
8 Medicare programs of the owner, if an individual, of any
9 officer or board member of the hospice, if the owner is a
10 firm, corporation, partnership, or association, or of any
11 person owning 5 percent or more of the hospice. Proof of
12 compliance with requirements for disclosure of ownership and
13 controlling interests under the Medicaid or Medicare programs
14 shall be accepted in lieu of this submission.

15 (3)~~(2)~~ A license issued for the operation of a
16 hospice, unless sooner suspended or revoked, shall expire
17 automatically 1 year from the date of issuance. Sixty days
18 prior to the expiration date, a hospice wishing to renew its
19 license shall submit an application for renewal to the agency
20 on forms furnished by the agency. The agency shall renew the
21 license if the applicant has first met the requirements
22 established under this part and all applicable rules and has
23 provided the information described under this section ~~in~~
24 ~~subsection (1)~~ in addition to the application. However, the
25 application for license renewal shall be accompanied by an
26 update of the plan for delivery of hospice care only if
27 information contained in the plan submitted pursuant to
28 subsection (1) is no longer applicable.

29 (4)~~(3)~~ A hospice against which a revocation or
30 suspension proceeding is pending at the time of license
31 renewal may be issued a conditional license by the agency

1 effective until final disposition of such proceeding. If
2 judicial relief is sought from the final agency action, the
3 court having jurisdiction may issue a conditional permit for
4 the duration of the judicial proceeding.

5 ~~(5)(4)~~ The agency shall not issue a license to a
6 hospice that fails to receive a certificate of need under the
7 provisions of ss. 408.031-408.045. A licensed hospice is a
8 health care facility as that term is used in s. 408.039(5) and
9 is entitled to initiate or intervene in an administrative
10 hearing.

11 ~~(6)(5)~~ A freestanding hospice facility that is
12 primarily engaged in providing inpatient and related services
13 and that is not otherwise licensed as a health care facility
14 shall be required to obtain a certificate of need. However, a
15 freestanding hospice facility with six or fewer beds shall not
16 be required to comply with institutional standards such as,
17 but not limited to, standards requiring sprinkler systems,
18 emergency electrical systems, or special lavatory devices.

19 Section 63. Section 400.6065, Florida Statutes, is
20 created to read:

21 400.6065 Background screening.--

22 (1) Upon receipt of a completed application under s.
23 400.606, the agency shall require level 2 background screening
24 on each of the following persons, who shall be considered
25 employees for the purposes of conducting screening under
26 chapter 435:

27 (a) The hospice administrator and financial officer.

28 (b) An officer or board member if the hospice is a
29 firm, corporation, partnership, or association, or any person
30 owning 5 percent or more of the hospice if the agency has
31 probable cause to believe that such officer, board member, or

1 owner has been convicted of any offense prohibited by s.
2 435.04. For each officer, board member, or person owning 5
3 percent or more who has been convicted of any such offense,
4 the hospice shall submit to the agency a description and
5 explanation of the conviction at the time of license
6 application. This paragraph does not apply to a board member
7 of a not-for-profit corporation or organization if the board
8 member serves solely in a voluntary capacity, does not
9 regularly take part in the day-to-day operational decisions of
10 the corporation or organization, receives no remuneration for
11 his or her services, and has no financial interest and has no
12 family members with a financial interest in the corporation or
13 organization, provided that the board member and the
14 corporation or organization submit a statement affirming that
15 the board member's relationship to the corporation or
16 organization satisfies the requirements of this paragraph.

17 (2) Proof of compliance with level 2 screening
18 standards which has been submitted within the previous 5 years
19 to meet any facility or professional licensure requirements of
20 the agency or the Department of Health satisfies the
21 requirements of this section.

22 (3) The agency may grant a provisional license to a
23 hospice applying for an initial license when each individual
24 required by this section to undergo screening has completed
25 the abuse registry and Department of Law Enforcement
26 background checks but has not yet received results from the
27 Federal Bureau of Investigation.

28 Section 64. Subsections (3), (4), (5), and (6) of
29 section 400.607, Florida Statutes, are renumbered as
30 subsections (4), (5), (6), and (7), respectively, and a new
31 subsection (3) is added to that section to read:

1 400.607 Denial, suspension, or revocation of license;
2 imposition of administrative fine; grounds; injunctions.--

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

5 (a) Persons subject to level 2 background screening
6 under s. 400.6065 do not meet the screening standards of s.
7 435.04, and exemptions from disqualification have not been
8 provided by the agency.

9 (b) An officer, board member, or person owning 5
10 percent or more of the hospice has been excluded, permanently
11 suspended, or terminated from the Medicare or Medicaid
12 programs.

13 Section 65. Section 400.619, Florida Statutes, is
14 amended to read:

15 400.619 Licensure application and renewal
16 requirements.--

17 (1) Each person who intends to be ~~a provider of an~~
18 adult family-care home provider must obtain a license from the
19 agency ~~before caring for a disabled adult or an aged person in~~
20 ~~the adult family-care home.~~ Such application must be made at
21 least 90 days before the applicant intends to operate the
22 adult family-care home.

23 (2) A person who intends to be ~~a provider of an adult~~
24 family-care home provider must own or rent and live in the
25 adult family-care home that is to be licensed.

26 (3) Application for a license or annual license
27 renewal ~~to operate an adult family-care home~~ must be made on a
28 form provided by the agency, signed by the provider and
29 notarized, and must be accompanied by a licensing fee of \$100
30 ~~per year to offset the cost of training and education programs~~
31 ~~by the Department of Elderly Affairs for providers.~~

1 (4) Upon receipt of an initial ~~a~~ license application
2 or license renewal application, and the fee, the agency shall
3 initiate level 1 background screening as provided under
4 chapter 435 on ~~must check with the abuse registry and the~~
5 ~~Department of Law Enforcement~~ concerning the adult family-care
6 home provider, each designated relief person applicant, all
7 adult household members, and all staff members. The agency
8 shall also conduct an onsite visit to the home that is to be
9 licensed.

10 (a) Proof of compliance with level 1 screening
11 standards which has been submitted within the previous 5 years
12 to meet any facility or professional licensure requirements of
13 the agency or the Department of Health satisfies the
14 requirements of this subsection. Such proof must be
15 accompanied, under penalty of perjury, by a copy of the
16 person's current professional license and an affidavit of
17 current compliance with the background screening requirements.

18 (b) The person required to be screened must have been
19 continuously employed in the same type of occupation for which
20 the person is seeking employment without a breach in service
21 that exceeds 180 days, and proof of compliance with the level
22 1 screening requirement which is no more than 2 years old must
23 be provided. Proof of compliance shall be provided directly
24 from one employer or contractor to another, and not from the
25 person screened. Upon request, a copy of screening results
26 shall be provided to the person screened by the employer
27 retaining documentation of the screening.

28 (5) The application must be accompanied by a
29 description and explanation of any exclusions, permanent
30 suspensions, or terminations of the applicant from
31

1 participation in the Medicaid or Medicare programs or any
2 other governmental health care or health insurance program.

3 (6) Unless the adult family-care home is a community
4 residential home subject to chapter 419, the applicant must
5 provide documentation, signed by the appropriate governmental
6 official, that the home has met local zoning requirements for
7 the location for which the license is sought.

8 (7)~~(5)~~ Access to a licensed adult family-care home
9 must be provided at reasonable times for the appropriate
10 officials of the department, the Department of Health, the
11 Department of Children and Family Services ~~and Rehabilitative~~
12 ~~Services~~, the agency, and the State Fire Marshal, who are
13 responsible for the development and maintenance of fire,
14 health, sanitary, and safety standards, to inspect the
15 facility to assure compliance with these standards. In
16 addition, access to a licensed adult family-care home must be
17 provided at reasonable times for the long-term care ombudsman
18 council.

19 (8)~~(6)~~ A license is effective for 1 year after the
20 date of issuance unless revoked sooner. Each license must
21 state the name of the provider, the address of the home to
22 which the license applies, and the maximum number of residents
23 of the home. A license may be issued with or without
24 restrictions governing the residents or care offered in the
25 adult family-care home.

26 (9)~~(7)~~ A license is not transferable or applicable to
27 any location or person other than the location and ~~or~~ person
28 indicated on the license ~~application for licensure~~.

29 (10)~~(8)~~ The licensed maximum capacity of each adult
30 family-care home is based on the service needs of the
31 residents and the capability of the provider to meet the needs

1 of the residents. Any relative who lives in the adult
2 family-care home and who is an aged person or a disabled adult
3 must be included in that limitation.

4 (11)~~(9)~~ Each adult family-care home must designate at
5 least one licensed space for a resident receiving optional
6 state supplementation ~~as defined in s. 409.212.~~ The
7 Department of Children and Family ~~Health and Rehabilitative~~
8 Services shall specify by rule the procedures to be followed
9 for referring residents who receive optional state
10 supplementation to adult family-care homes. Those homes
11 licensed as adult foster homes or assisted living facilities
12 prior to January 1, 1994, that convert to adult family-care
13 homes, are exempt from this ~~the~~ requirement of ~~designating one~~
14 ~~space for a resident receiving optional state supplementation.~~

15 (12)~~(10)~~ The agency may issue a conditional license to
16 a provider for the purpose of bringing the adult family-care
17 home into compliance with licensure requirements. A
18 conditional license must be limited to a specific period, not
19 exceeding 6 months, ~~as determined by the department, in~~
20 ~~consultation with the agency.~~ The department shall, by rule,
21 establish criteria for issuing conditional licenses.

22 ~~(11)~~ ~~The agency may deny, suspend, or revoke a license~~
23 ~~for any of the following reasons:~~

24 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
25 ~~abuse, neglect, or exploitation, or conviction of a crime~~
26 ~~related to abuse, neglect, or exploitation.~~

27 ~~(b) A proposed confirmed report that remains unserved~~
28 ~~and is maintained in the central abuse registry and tracking~~
29 ~~system pursuant to s. 415.1065(2)(c).~~

30
31

1 ~~(c) An intentional or negligent act materially~~
2 ~~affecting the health, safety, or welfare of the adult~~
3 ~~family-care home residents.~~

4 ~~(d) A violation of ss. 400.616-400.629 or rules~~
5 ~~adopted under ss. 400.616-400.629, including the failure to~~
6 ~~comply with any restrictions specified in the license.~~

7 ~~(e) Submission of fraudulent or inaccurate information~~
8 ~~to the agency.~~

9 ~~(f) Conviction of a felony involving violence to a~~
10 ~~person.~~

11 ~~(g) Failure to pay a civil penalty assessed under this~~
12 ~~part.~~

13 ~~(13)~~⁽¹²⁾ All moneys collected under this section must
14 be deposited into the Department of Elderly Affairs
15 Administrative Trust Fund and ~~must be~~ used to offset the
16 expenses of departmental training and education for adult
17 family-care home providers.

18 ~~(14)~~⁽¹³⁾ The department ~~may~~ shall adopt rules to
19 establish procedures, identify forms, specify documentation,
20 and clarify licensure requirements, as necessary to administer
21 ~~implement~~ this section.

22 Section 66. Section 400.6194, Florida Statutes, is
23 created to read:

24 400.6194 Denial, revocation, or suspension of a
25 license.--The agency may deny, suspend, or revoke a license
26 for any of the following reasons:

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

31

1 (2) An intentional or negligent act materially
2 affecting the health, safety, or welfare of the adult
3 family-care home residents.

4 (3) Failure to comply with any restrictions specified
5 in the license.

6 (4) Submission of fraudulent information or omission
7 of any material fact on a license application or any other
8 document required by the agency.

9 (5) Failure to pay an administrative fine assessed
10 under this part.

11 (6) A violation of this part or adopted rules which
12 results in conditions or practices that directly threaten the
13 physical or emotional health, safety, or welfare of residents.

14 (7) Failure to correct cited fire code violations that
15 threaten the health, safety, or welfare of residents.

16 (8) Failure to submit a completed initial license
17 application or to complete an application for license renewal
18 within the specified timeframes.

19 (9) Exclusion, permanent suspension, or termination of
20 the provider from the Medicare or Medicaid programs.

21 Section 67. Section 400.801, Florida Statutes, is
22 amended to read:

23 400.801 Homes for special services.--

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

25 (a) "Agency" means the "Agency for Health Care
26 Administration."

27 (b) "Home for special services" means a site where
28 specialized health care services are provided, including
29 personal and custodial care, but not continuous nursing
30 services.

31

1 (2) A person must obtain a license from the agency to
2 operate a home for special services. A license is valid for 1
3 year.

4 (3) The application for a license under this section
5 must be made on a form provided by the agency. A
6 nonrefundable license fee of not more than \$1,000 must be
7 submitted with the license application.

8 (4) Each applicant for licensure must comply with the
9 following requirements:

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

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

27 (c) Proof of compliance with the level 2 background
28 screening requirements of chapter 435 which has been submitted
29 within the previous 5 years in compliance with any other
30 health care or assisted living licensure requirements of this
31

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 abuse registry background check and the Department of Law
7 Enforcement background check but the agency has not yet
8 received background screening results from the Federal Bureau
9 of Investigation, or a request for a disqualification
10 exemption has been submitted to the agency as set forth in
11 chapter 435 but a response has not yet been issued. A standard
12 license may be granted to the applicant upon the agency's
13 receipt of a report of the results of the Federal Bureau of
14 Investigation background screening for each individual
15 required by this section to undergo background screening which
16 confirms that all standards have been met, or upon the
17 granting of a disqualification exemption by the agency as set
18 forth in chapter 435. Any other person who is required to
19 undergo level 2 background screening may serve in his or her
20 capacity pending the agency's receipt of the report from the
21 Federal Bureau of Investigation. However, the person may not
22 continue to serve if the report indicates any violation of
23 background screening standards and a disqualification
24 exemption has not been requested of and granted by the agency
25 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 controlling
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 (e) 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 programs 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 (5)(4) Application for license renewal must be
9 submitted 90 days before the expiration of the license.

10 (6)(5) A change of ownership or control of a home for
11 special services must be reported to the agency in writing at
12 least 60 days before the change is scheduled to take effect.

13 (7)(6) The agency shall adopt rules for implementing
14 and enforcing this section.

15 (8)(7)(a) It is unlawful for any person to establish,
16 conduct, manage, or operate a home for special services
17 without obtaining a license from the agency.

18 (b) It is unlawful for any person to offer or
19 advertise to the public, in any medium whatever, specialized
20 health care services without obtaining a license from the
21 agency.

22 (c) It is unlawful for a holder of a license issued
23 under this section to advertise or represent to the public
24 that it holds a license for a type of facility other than the
25 facility for which its license is issued.

26 (9)(8)(a) A violation of any provision of this section
27 or rules adopted by the agency for implementing this section
28 is punishable by payment of an administrative fine not to
29 exceed \$5,000.

30 (b) A violation of subsection (8)(7) or rules adopted
31 under that subsection is a misdemeanor of the first degree,

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

3 Section 68. Paragraph (c) of subsection (2) and
4 present subsections (3) and (7) of section 400.805, Florida
5 Statutes, are amended, subsections (3) through (7) are
6 renumbered as subsections (4) through (8), respectively, and a
7 new subsection (3) is added to that section, to read:

8 400.805 Transitional living facilities.--

9 (2)

10 (c) The agency may not issue a license to an applicant
11 until the agency receives notice from the division as provided
12 in paragraph ~~(6)~~(5)(b).

13 (3) Each applicant for licensure must comply with the
14 following requirements:

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

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

31

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 or assisted living licensure requirements of this
5 state is acceptable in fulfillment of the requirements of
6 paragraph (a).

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

30 (e) Each applicant must submit to the agency, with its
31 application, a description and explanation of any exclusions,

1 permanent suspensions, or terminations of the applicant from
2 the Medicare or Medicaid programs. Proof of compliance with
3 the requirements for disclosure of ownership and controlling
4 interests under the Medicaid or Medicare programs shall be
5 accepted in lieu of this submission.

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

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

31

1 (h) The agency may deny or revoke licensure if the
2 applicant:

3 1. Has falsely represented a material fact in the
4 application required by paragraph (e) or paragraph (f), or has
5 omitted any material fact from the application required by
6 paragraph (e) or paragraph (f); or

7 2. Has had prior action taken against the applicant
8 under the Medicaid or Medicare programs as set forth in
9 paragraph (e).

10 (i) An application for license renewal must contain
11 the information required under paragraphs (e) and (f).

12 ~~(4)(3)~~ An application for renewal of license must be
13 submitted 90 days before the expiration of the license. Upon
14 renewal of licensure, each applicant must submit to the
15 agency, under penalty of perjury, an affidavit as set forth in
16 paragraph (3)(e).

17 ~~(8)(7)~~(a) A violation of any provision of this section
18 or rules adopted by the agency or division under this section
19 is punishable by payment of an administrative or a civil
20 penalty fine not to exceed \$5,000.

21 (b) A violation of subsection~~(7)(6)~~ or rules adopted
22 under that subsection is a misdemeanor of the first degree,
23 punishable as provided in s. 775.082 or s. 775.083. Each day
24 of a continuing violation is a separate offense.

25 Section 69. Subsection (9) of section 408.032, Florida
26 Statutes, is amended to read:

27 408.032 Definitions.--As used in ss. 408.031-408.045,
28 the term:

29 (9) "Home health agency" means an organization, as
30 defined in s. 400.462~~(8)(4)~~, that is certified or seeks
31 certification as a Medicare home health service provider.

1 Section 70. Paragraph (a) of subsection (11) of
2 section 408.072, Florida Statutes, is amended to read:

3 408.072 Review of hospital budgets.--

4 (11) Notwithstanding any other provisions of this
5 chapter:

6 (a) Any hospital operated by the Department of
7 Children and Family Health and Rehabilitative Services or the
8 Department of Corrections; any rural hospital as defined in s.
9 408.07; and any intensive residential treatment program for
10 children and adolescents as defined in s. 395.002(18)~~(16)~~
11 which received a certificate of need on or before January 1,
12 1991, and is licensed under chapter 395 for less than 33 beds,
13 which is not part of a multifacility organization and which is
14 part of a community mental health system, shall be exempt from
15 filing a budget, and shall be exempt from budget review and
16 approval for exceeding the maximum allowable rate of increase
17 and from any penalties arising therefrom. However, each such
18 hospital shall be required to submit to the board its audited
19 actual experience, as required by s. 408.061(4)(a).

20 Section 71. Subsection (8) of section 409.905, Florida
21 Statutes, is amended to read:

22 409.905 Mandatory Medicaid services.--The agency may
23 make payments for the following services, which are required
24 of the state by Title XIX of the Social Security Act,
25 furnished by Medicaid providers to recipients who are
26 determined to be eligible on the dates on which the services
27 were provided. Any service under this section shall be
28 provided only when medically necessary and in accordance with
29 state and federal law. Nothing in this section shall be
30 construed to prevent or limit the agency from adjusting fees,
31 reimbursement rates, lengths of stay, number of visits, number

1 of services, or any other adjustments necessary to comply with
2 the availability of moneys and any limitations or directions
3 provided for in the General Appropriations Act or chapter 216.

4 (8) NURSING FACILITY SERVICES.--The agency shall pay
5 for 24-hour-a-day nursing and rehabilitative services for a
6 recipient in a nursing facility licensed under part II of
7 chapter 400 or in a rural hospital, as defined in s. 395.602,
8 or in a Medicare certified skilled nursing facility operated
9 by a hospital, as defined by s. 395.002(12)~~(10)~~, that is
10 licensed under part I of chapter 395, and in accordance with
11 provisions set forth in s. 409.908(2)(a), which services are
12 ordered by and provided under the direction of a licensed
13 physician. However, if a nursing facility has been destroyed
14 or otherwise made uninhabitable by natural disaster or other
15 emergency and another nursing facility is not available, the
16 agency must pay for similar services temporarily in a hospital
17 licensed under part I of chapter 395 provided federal funding
18 is approved and available.

19 Section 72. Paragraph (d) of subsection (1) of section
20 419.001, Florida Statutes, is amended to read:

21 419.001 Site selection of community residential
22 homes.--

23 (1) For the purposes of this section, the following
24 definitions shall apply:

25 (d) "Resident" means any of the following: an aged
26 person as defined in s. 400.618(3); a physically disabled or
27 handicapped person as defined in s. 760.22(7)(a); a
28 developmentally disabled person as defined in s.
29 393.063(12)~~(11)~~; a nondangerous mentally ill person as defined
30 in s. 394.455(18)~~(16)~~; or a child as defined in s. 39.01(12)
31 and (14).

1 Section 73. Subsection (2) of section 430.04, Florida
2 Statutes, is amended to read:

3 430.04 Duties and responsibilities of the Department
4 of Elderly Affairs.--The Department of Elderly Affairs shall:

5 (2) Be responsible for ensuring that each area agency
6 on aging operates in a manner to ensure that the elderly of
7 this state receive the best services possible. The department
8 shall rescind designation of an area agency on aging or take
9 intermediate measures against the agency, including corrective
10 action, unannounced special monitoring, temporary assumption
11 of operation of one or more programs by the department,
12 placement on probationary status, imposing a moratorium on
13 agency action, imposing financial penalties for
14 nonperformance, or other administrative action pursuant to
15 chapter 120, if the department finds that:

16 (a) An intentional or negligent act of the agency has
17 materially affected the health, welfare, or safety of clients,
18 or substantially and negatively affected the operation of an
19 aging services program.

20 (b) The agency lacks financial stability sufficient to
21 meet contractual obligations or that contractual funds have
22 been misappropriated.

23 (c) The agency has committed multiple or repeated
24 violations of legal and regulatory requirements or department
25 standards.

26 (d) The agency has failed to continue the provision or
27 expansion of services after the declaration of a state of
28 emergency.

29 (e) The agency has failed to adhere to the terms of
30 its contract with the department.

31

1 (f) The agency has failed to implement and maintain a
2 department-approved client grievance resolution procedure.

3 Section 74. Paragraph (g) of subsection (1) of section
4 440.13, Florida Statutes, is amended to read:

5 440.13 Medical services and supplies; penalty for
6 violations; limitations.--

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

8 (g) "Emergency services and care" means emergency
9 services and care as defined in s. 395.002~~(9)~~.

10 Section 75. Paragraphs (i) and (k) of subsection (3)
11 of section 455.654, Florida Statutes, are amended to read:

12 455.654 Financial arrangements between referring
13 health care providers and providers of health care services.--

14 (3) DEFINITIONS.--For the purpose of this section, the
15 word, phrase, or term:

16 (i) "Investment interest" means an equity or debt
17 security issued by an entity, including, without limitation,
18 shares of stock in a corporation, units or other interests in
19 a partnership, bonds, debentures, notes, or other equity
20 interests or debt instruments. ~~Except for purposes of s.~~
21 ~~455.661,~~The following investment interests shall be excepted
22 from this definition:

23 1. An investment interest in an entity that is the
24 sole provider of designated health services in a rural area;

25 2. An investment interest in notes, bonds, debentures,
26 or other debt instruments issued by an entity which provides
27 designated health services, as an integral part of a plan by
28 such entity to acquire such investor's equity investment
29 interest in the entity, provided that the interest rate is
30 consistent with fair market value, and that the maturity date
31 of the notes, bonds, debentures, or other debt instruments

1 issued by the entity to the investor is not later than October
2 1, 1996.

3 3. An investment interest in real property resulting
4 in a landlord-tenant relationship between the health care
5 provider and the entity in which the equity interest is held,
6 unless the rent is determined, in whole or in part, by the
7 business volume or profitability of the tenant or exceeds fair
8 market value; or

9 4. An investment interest in an entity which owns or
10 leases and operates a hospital licensed under chapter 395 or a
11 nursing home facility licensed under chapter 400.

12 (k) "Referral" means any referral of a patient by a
13 health care provider for health care services, including,
14 without limitation:

15 1. The forwarding of a patient by a health care
16 provider to another health care provider or to an entity which
17 provides or supplies designated health services or any other
18 health care item or service; or

19 2. The request or establishment of a plan of care by a
20 health care provider, which includes the provision of
21 designated health services or other health care item or
22 service.

23 3. ~~Except for the purposes of s. 455.661,~~The
24 following orders, recommendations, or plans of care shall not
25 constitute a referral by a health care provider:

26 a. By a radiologist for diagnostic-imaging services.

27 b. By a physician specializing in the provision of
28 radiation therapy services for such services.

29 c. By a medical oncologist for drugs and solutions to
30 be prepared and administered intravenously to such
31 oncologist's patient, as well as for the supplies and

- 1 equipment used in connection therewith to treat such patient
2 for cancer and the complications thereof.
- 3 d. By a cardiologist for cardiac catheterization
4 services.
- 5 e. By a pathologist for diagnostic clinical laboratory
6 tests and pathological examination services, if furnished by
7 or under the supervision of such pathologist pursuant to a
8 consultation requested by another physician.
- 9 f. By a health care provider who is the sole provider
10 or member of a group practice for designated health services
11 or other health care items or services that are prescribed or
12 provided solely for such referring health care provider's or
13 group practice's own patients, and that are provided or
14 performed by or under the direct supervision of such referring
15 health care provider or group practice.
- 16 g. By a health care provider for services provided by
17 an ambulatory surgical center licensed under chapter 395.
- 18 h. By a health care provider for diagnostic clinical
19 laboratory services where such services are directly related
20 to renal dialysis.
- 21 i. By a urologist for lithotripsy services.
- 22 j. By a dentist for dental services performed by an
23 employee of or health care provider who is an independent
24 contractor with the dentist or group practice of which the
25 dentist is a member.
- 26 k. By a physician for infusion therapy services to a
27 patient of that physician or a member of that physician's
28 group practice.
- 29 l. By a nephrologist for renal dialysis services and
30 supplies.
- 31

1 Section 76. Subsection (1) of section 468.505, Florida
2 Statutes, is amended to read:

3 468.505 Exemptions; exceptions.--

4 (1) Nothing in this part may be construed as
5 prohibiting or restricting the practice, services, or
6 activities of:

7 (a) A person licensed in this state under chapter 457,
8 chapter 458, chapter 459, chapter 460, chapter 461, chapter
9 462, chapter 463, chapter 464, chapter 465, chapter 466,
10 chapter 480, chapter 490, or chapter 491, when engaging in the
11 profession or occupation for which he or she is licensed, or
12 of any person employed by and under the supervision of the
13 licensee when rendering services within the scope of the
14 profession or occupation of the licensee.†

15 (b) A person employed as a dietitian by the government
16 of the United States, if the person engages in dietetics
17 solely under direction or control of the organization by which
18 the person is employed.†

19 (c) A person employed as a cooperative extension home
20 economist.†

21 (d) A person pursuing a course of study leading to a
22 degree in dietetics and nutrition from a program or school
23 accredited pursuant to s. 468.509(2), if the activities and
24 services constitute a part of a supervised course of study and
25 if the person is designated by a title that clearly indicates
26 the person's status as a student or trainee.†

27 (e) A person fulfilling the supervised experience
28 component of s. 468.509, if the activities and services
29 constitute a part of the experience necessary to meet the
30 requirements of s. 468.509.†

31

1 (f) Any dietitian or nutritionist from another state
2 practicing dietetics or nutrition incidental to a course of
3 study when taking or giving a postgraduate course or other
4 course of study in this state, provided such dietitian or
5 nutritionist is licensed in another jurisdiction or is a
6 registered dietitian or holds an appointment on the faculty of
7 a school accredited pursuant to s. 468.509(2).†

8 (g) A person who markets or distributes food, food
9 materials, or dietary supplements, or any person who engages
10 in the explanation of the use and benefits of those products
11 or the preparation of those products, if that person does not
12 engage for a fee in dietetics and nutrition practice or
13 nutrition counseling.†

14 (h) A person who markets or distributes food, food
15 materials, or dietary supplements, or any person who engages
16 in the explanation of the use of those products or the
17 preparation of those products, as an employee of an
18 establishment permitted pursuant to chapter 465.†

19 (i) An educator who is in the employ of a nonprofit
20 organization approved by the council; a federal, state,
21 county, or municipal agency, or other political subdivision;
22 an elementary or secondary school; or an accredited
23 institution of higher education the definition of which, as
24 provided in s. 468.509(2), applies to other sections of this
25 part, insofar as the activities and services of the educator
26 are part of such employment.†

27 (j) Any person who provides weight control services or
28 related weight control products, provided the program has been
29 reviewed by, consultation is available from, and no program
30 change can be initiated without prior approval by a licensed
31 dietitian/nutritionist, a dietitian or nutritionist licensed

1 in another state that has licensure requirements considered by
2 the council to be at least as stringent as the requirements
3 for licensure under this part, or a registered dietitian.†

4 (k) A person employed by a hospital licensed under
5 chapter 395, or by a nursing home or assisted living facility
6 licensed under part II or part III of chapter 400, or by a
7 continuing care facility certified under chapter 651, if the
8 person is employed in compliance with the laws and rules
9 adopted thereunder regarding the operation of its dietetic
10 department.†

11 (l) A person employed by a nursing facility exempt
12 from licensing under s. 395.002(14)~~s. 395.002(12)~~, or a
13 person exempt from licensing under s. 464.022.†~~or~~

14 (m) A person employed as a dietetic technician.

15 Section 77. Section 483.101, Florida Statutes, is
16 amended to read:

17 483.101 Application for clinical laboratory license.--

18 (1) An application for a clinical laboratory license
19 must be made under oath by the owner or ~~director~~ operator of
20 the clinical laboratory or by the public official responsible
21 for operating a state, municipal, or county clinical
22 laboratory or institution that contains a clinical laboratory,
23 upon forms provided by the agency.

24 (2) Each applicant for licensure must comply with the
25 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 2 standards for screening set forth
29 in chapter 435, of the managing director or other similarly
30 titled individual who is responsible for the daily operation
31 of the laboratory and of the financial officer, or other

1 similarly titled individual who is responsible for the
2 financial operation of the laboratory, including billings for
3 patient services. The applicant must comply with the
4 procedures for level 2 background screening as set forth in
5 chapter 435, as well as the requirements of s. 435.03(3).
6 (b) The agency may require background screening of any
7 other individual who is an applicant if the agency has
8 probable cause to believe that he or she has been convicted of
9 a crime or has committed any other offense prohibited under
10 the level 2 standards for screening set forth in chapter 435.
11 (c) Proof of compliance with the level 2 background
12 screening requirements of chapter 435 which has been submitted
13 within the previous 5 years in compliance with any other
14 health care licensure requirements of this state is acceptable
15 in fulfillment of the requirements of paragraph (a).
16 (d) A provisional license may be granted to an
17 applicant when each individual required by this section to
18 undergo background screening has met the standards for the
19 abuse registry background check and the Department of Law
20 Enforcement background check but the agency has not yet
21 received background screening results from the Federal Bureau
22 of Investigation, or a request for a disqualification
23 exemption has been submitted to the agency as set forth in
24 chapter 435 but a response has not yet been issued. A license
25 may 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 a disqualification exemption has not
6 been requested of and granted by the agency as set forth in
7 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 controlling
13 interests under the Medicaid or Medicare programs shall 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 by a
18 member of the board of directors of the applicant, its
19 officers, or any individual owning 5 percent or more of the
20 applicant. This requirement does not apply to a director of a
21 not-for-profit corporation or organization if the director
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 or organization's board of directors, and has no
27 financial interest and has no family members with a financial
28 interest in the corporation or organization, provided that the
29 director and the not-for-profit corporation or organization
30 include in the application a statement affirming that the
31

1 director's relationship to the corporation satisfies the
2 requirements of this paragraph.

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

10 (h) The agency may deny or revoke licensure if the
11 applicant:

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

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

19 (i) An application for license renewal must contain
20 the information required under paragraphs (e) and (f).

21 (3) A license must be issued authorizing the
22 performance of one or more clinical laboratory procedures or
23 one or more tests on each specialty or subspecialty. A
24 separate license is required of all laboratories maintained on
25 separate premises even if the laboratories are operated under
26 the same management. Upon receipt of a request for an
27 application for a clinical laboratory license, the agency
28 shall provide to the applicant a copy of the rules relating to
29 licensure and operations applicable to the laboratory for
30 which licensure is sought.

31

1 Section 78. Section 483.106, Florida Statutes, is
2 amended to read:

3 483.106 Application for a certificate of
4 exemption.--An application for a certificate of exemption must
5 be made under oath by the owner or director ~~operator~~ of a
6 clinical laboratory that performs only waived tests as defined
7 in s. 483.041. A certificate of exemption authorizes a
8 clinical laboratory to perform waived tests. Laboratories
9 maintained on separate premises and operated under the same
10 management may apply for a single certificate of exemption or
11 multiple certificates of exemption. The agency shall, by rule,
12 specify the process for biennially issuing certificates of
13 exemption. Sections 483.011, 483.021, 483.031, 483.041,
14 483.172, 483.23, and 483.25 apply to a clinical laboratory
15 that obtains a certificate of exemption under this section.

16 Section 79. Section 483.30, Florida Statutes, is
17 amended to read:

18 483.30 Licensing of centers.--

19 (1) A person may not conduct, maintain, or operate a
20 multiphasic health testing center in this state without
21 obtaining a multiphasic health testing center license from the
22 agency. The license is valid only for the person or persons
23 to whom it is issued and may not be sold, assigned, or
24 transferred, voluntarily or involuntarily. A license is not
25 valid for any premises other than the center for which it is
26 issued. However, a new license may be secured for the new
27 location for a fixed center before the actual change, if the
28 contemplated change is in compliance with this part and the
29 rules adopted under this part. A center must be relicensed if
30 a change of ownership occurs. Application for relicensure
31 must be made 60 days before the change of ownership.

1 (2) Each applicant for licensure must comply with the
2 following requirements:
3 (a) Upon receipt of a completed, signed, and dated
4 application, the agency shall require background screening, in
5 accordance with the level 2 standards for screening set forth
6 in chapter 435, of the managing employee, or other similarly
7 titled individual who is responsible for the daily operation
8 of the center, and of the financial officer, or other
9 similarly titled individual who is responsible for the
10 financial operation of the center, including billings for
11 patient services. The applicant must comply with the
12 procedures for level 2 background screening as set forth in
13 chapter 435, as well as the requirements of s. 435.03(3).
14 (b) The agency may require background screening of any
15 other individual who is an applicant if the agency has
16 probable cause to believe that he or she has been convicted of
17 a crime or has committed any other offense prohibited under
18 the level 2 standards for screening set forth in chapter 435.
19 (c) Proof of compliance with the level 2 background
20 screening requirements of chapter 435 which has been submitted
21 within the previous 5 years in compliance with any other
22 health care licensure requirements of this state is acceptable
23 in fulfillment of the requirements of paragraph (a).
24 (d) A provisional license may be granted to an
25 applicant when each individual required by this section to
26 undergo background screening has met the standards for the
27 abuse registry background check and the Department of Law
28 Enforcement background check, but the agency has not yet
29 received background screening results from the Federal Bureau
30 of Investigation, or a request for a disqualification
31 exemption has been submitted to the agency as set forth in

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

23 2. Has had prior action taken against the applicant
24 under the Medicaid or Medicare programs as set forth in
25 paragraph (e).

26 (i) An application for license renewal must contain
27 the information required under paragraphs (e) and (f).

28 Section 80. Subsection (1) of section 92.53, Florida
29 Statutes, is amended to read:

30 92.53 Videotaping of testimony of victim or witness
31 under age 16 or person with mental retardation.--

1 (1) On motion and hearing in camera and a finding that
2 there is a substantial likelihood that a victim or witness who
3 is under the age of 16 or who is a person with mental
4 retardation as defined in s. 393.063(44)~~(41)~~would suffer at
5 least moderate emotional or mental harm due to the presence of
6 the defendant if the child or person with mental retardation
7 is required to testify in open court, or that such victim or
8 witness is otherwise unavailable as defined in s. 90.804(1),
9 the trial court may order the videotaping of the testimony of
10 the victim or witness in a case, whether civil or criminal in
11 nature, in which videotaped testimony is to be utilized at
12 trial in lieu of trial testimony in open court.

13 Section 81. Section 914.16, Florida Statutes, is
14 amended to read:

15 914.16 Child abuse and sexual abuse of victims under
16 age 16 or persons with mental retardation; limits on
17 interviews.--The chief judge of each judicial circuit, after
18 consultation with the state attorney and the public defender
19 for the judicial circuit, the appropriate chief law
20 enforcement officer, and any other person deemed appropriate
21 by the chief judge, shall provide by order reasonable limits
22 on the number of interviews that a victim of a violation of s.
23 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
24 or a victim of a violation of s. 794.011, s. 800.02, s.
25 800.03, or s. 825.102 who is a person with mental retardation
26 as defined in s. 393.063(44)~~(41)~~must submit to for law
27 enforcement or discovery purposes. The order shall, to the
28 extent possible, protect the victim from the psychological
29 damage of repeated interrogations while preserving the rights
30 of the public, the victim, and the person charged with the
31 violation.

1 Section 82. The introductory paragraph of subsection
2 (2) of section 914.17, Florida Statutes, is amended to read:
3 914.17 Appointment of advocate for victims or
4 witnesses who are minors or persons with mental retardation.--

5 (2) An advocate shall be appointed by the court to
6 represent a person with mental retardation as defined in s.
7 393.063(44)~~(41)~~ in any criminal proceeding if the person with
8 mental retardation is a victim of or witness to abuse or
9 neglect, or if the person with mental retardation is a victim
10 of a sexual offense or a witness to a sexual offense committed
11 against a minor or person with mental retardation. The court
12 may appoint an advocate in any other criminal proceeding in
13 which a person with mental retardation is involved as either a
14 victim or a witness. The advocate shall have full access to
15 all evidence and reports introduced during the proceedings,
16 may interview witnesses, may make recommendations to the
17 court, shall be noticed and have the right to appear on behalf
18 of the person with mental retardation at all proceedings, and
19 may request additional examinations by medical doctors,
20 psychiatrists, or psychologists. It is the duty of the
21 advocate to perform the following services:

22 Section 83. Section 918.16, Florida Statutes, is
23 amended to read:

24 918.16 Sex offenses; testimony of person under age 16
25 or person with mental retardation; courtroom cleared;
26 exceptions.--In the trial of any case, civil or criminal, when
27 any person under the age of 16 or any person with mental
28 retardation as defined in s. 393.063(44)~~(41)~~ is testifying
29 concerning any sex offense, the court shall clear the
30 courtroom of all persons except parties to the cause and their
31 immediate families or guardians, attorneys and their

1 secretaries, officers of the court, jurors, newspaper
2 reporters or broadcasters, court reporters, and at the request
3 of the victim, victim or witness advocates designated by the
4 state attorney's office.

5 Section 84. Paragraph (a) of subsection (4) of section
6 943.0585, Florida Statutes, is amended to read:

7 943.0585 Court-ordered expunction of criminal history
8 records.--The courts of this state have jurisdiction over
9 their own procedures, including the maintenance, expunction,
10 and correction of judicial records containing criminal history
11 information to the extent such procedures are not inconsistent
12 with the conditions, responsibilities, and duties established
13 by this section. Any court of competent jurisdiction may
14 order a criminal justice agency to expunge the criminal
15 history record of a minor or an adult who complies with the
16 requirements of this section. The court shall not order a
17 criminal justice agency to expunge a criminal history record
18 until the person seeking to expunge a criminal history record
19 has applied for and received a certificate of eligibility for
20 expunction pursuant to subsection (2). A criminal history
21 record that relates to a violation of chapter 794, s. 800.04,
22 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
23 violation enumerated in s. 907.041 may not be expunged,
24 without regard to whether adjudication was withheld, if the
25 defendant was found guilty of or pled guilty or nolo
26 contendere to the offense, or if the defendant, as a minor,
27 was found to have committed, or pled guilty or nolo contendere
28 to committing, the offense as a delinquent act. The court may
29 only order expunction of a criminal history record pertaining
30 to one arrest or one incident of alleged criminal activity,
31 except as provided in this section. The court may, at its sole

1 discretion, order the expunction of a criminal history record
2 pertaining to more than one arrest if the additional arrests
3 directly relate to the original arrest. If the court intends
4 to order the expunction of records pertaining to such
5 additional arrests, such intent must be specified in the
6 order. A criminal justice agency may not expunge any record
7 pertaining to such additional arrests if the order to expunge
8 does not articulate the intention of the court to expunge a
9 record pertaining to more than one arrest. This section does
10 not prevent the court from ordering the expunction of only a
11 portion of a criminal history record pertaining to one arrest
12 or one incident of alleged criminal activity. Notwithstanding
13 any law to the contrary, a criminal justice agency may comply
14 with laws, court orders, and official requests of other
15 jurisdictions relating to expunction, correction, or
16 confidential handling of criminal history records or
17 information derived therefrom. This section does not confer
18 any right to the expunction of any criminal history record,
19 and any request for expunction of a criminal history record
20 may be denied at the sole discretion of the court.

21 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
22 criminal history record of a minor or an adult which is
23 ordered expunged by a court of competent jurisdiction pursuant
24 to this section must be physically destroyed or obliterated by
25 any criminal justice agency having custody of such record;
26 except that any criminal history record in the custody of the
27 department must be retained in all cases. A criminal history
28 record ordered expunged that is retained by the department is
29 confidential and exempt from the provisions of s. 119.07(1)
30 and s. 24(a), Art. I of the State Constitution and not
31 available to any person or entity except upon order of a court

1 of competent jurisdiction. A criminal justice agency may
2 retain a notation indicating compliance with an order to
3 expunge.

4 (a) The person who is the subject of a criminal
5 history record that is expunged under this section or under
6 other provisions of law, including former s. 893.14, former s.
7 901.33, and former s. 943.058, may lawfully deny or fail to
8 acknowledge the arrests covered by the expunged record, except
9 when the subject of the record:

- 10 1. Is a candidate for employment with a criminal
11 justice agency;
- 12 2. Is a defendant in a criminal prosecution;
- 13 3. Concurrently or subsequently petitions for relief
14 under this section or s. 943.059;
- 15 4. Is a candidate for admission to The Florida Bar;
- 16 5. Is seeking to be employed or licensed by or to
17 contract with the Department of Children and Family Health and
18 ~~Rehabilitative~~ Services or to be employed or used by such
19 contractor or licensee in a sensitive position having direct
20 contact with children, the developmentally disabled, the aged,
21 or the elderly as provided in ~~s. 39.076~~, s. 110.1127(3), s.
22 393.063(15)(14), s. 394.4572(1), s. 397.451, s. 402.302(8), s.
23 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4),
24 s. 985.407, or chapter 400; or
- 25 6. Is seeking to be employed or licensed by the Office
26 of Teacher Education, Certification, Staff Development, and
27 Professional Practices of the Department of Education, any
28 district school board, or any local governmental entity that
29 licenses child care facilities.

30 Section 85. Paragraph (a) of subsection (4) of section
31 943.059, Florida Statutes, is amended to read:

1 943.059 Court-ordered sealing of criminal history
2 records.--The courts of this state shall continue to have
3 jurisdiction over their own procedures, including the
4 maintenance, sealing, and correction of judicial records
5 containing criminal history information to the extent such
6 procedures are not inconsistent with the conditions,
7 responsibilities, and duties established by this section. Any
8 court of competent jurisdiction may order a criminal justice
9 agency to seal the criminal history record of a minor or an
10 adult who complies with the requirements of this section. The
11 court shall not order a criminal justice agency to seal a
12 criminal history record until the person seeking to seal a
13 criminal history record has applied for and received a
14 certificate of eligibility for sealing pursuant to subsection
15 (2). A criminal history record that relates to a violation of
16 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
17 s. 893.135, or a violation enumerated in s. 907.041 may not be
18 sealed, without regard to whether adjudication was withheld,
19 if the defendant was found guilty of or pled guilty or nolo
20 contendere to the offense, or if the defendant, as a minor,
21 was found to have committed or pled guilty or nolo contendere
22 to committing the offense as a delinquent act. The court may
23 only order sealing of a criminal history record pertaining to
24 one arrest or one incident of alleged criminal activity,
25 except as provided in this section. The court may, at its sole
26 discretion, order the sealing of a criminal history record
27 pertaining to more than one arrest if the additional arrests
28 directly relate to the original arrest. If the court intends
29 to order the sealing of records pertaining to such additional
30 arrests, such intent must be specified in the order. A
31 criminal justice agency may not seal any record pertaining to

1 such additional arrests if the order to seal does not
2 articulate the intention of the court to seal records
3 pertaining to more than one arrest. This section does not
4 prevent the court from ordering the sealing of only a portion
5 of a criminal history record pertaining to one arrest or one
6 incident of alleged criminal activity. Notwithstanding any law
7 to the contrary, a criminal justice agency may comply with
8 laws, court orders, and official requests of other
9 jurisdictions relating to sealing, correction, or confidential
10 handling of criminal history records or information derived
11 therefrom. This section does not confer any right to the
12 sealing of any criminal history record, and any request for
13 sealing a criminal history record may be denied at the sole
14 discretion of the court.

15 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
16 criminal history record of a minor or an adult which is
17 ordered sealed by a court of competent jurisdiction pursuant
18 to this section is confidential and exempt from the provisions
19 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
20 and is available only to the person who is the subject of the
21 record, to the subject's attorney, to criminal justice
22 agencies for their respective criminal justice purposes, or to
23 those entities set forth in subparagraphs (a)1., 4., 5., and
24 6. for their respective licensing and employment purposes.

25 (a) The subject of a criminal history record sealed
26 under this section or under other provisions of law, including
27 former s. 893.14, former s. 901.33, and former s. 943.058, may
28 lawfully deny or fail to acknowledge the arrests covered by
29 the sealed record, except when the subject of the record:

30 1. Is a candidate for employment with a criminal
31 justice agency;

- 1 2. Is a defendant in a criminal prosecution;
2 3. Concurrently or subsequently petitions for relief
3 under this section or s. 943.0585;
4 4. Is a candidate for admission to The Florida Bar;
5 5. Is seeking to be employed or licensed by or to
6 contract with the Department of Children and Family Health and
7 ~~Rehabilitative~~ Services or the Department of Juvenile Justice
8 or to be employed or used by such contractor or licensee in a
9 sensitive position having direct contact with children, the
10 developmentally disabled, the aged, or the elderly as provided
11 in ~~s. 39.076~~, s. 110.1127(3), s. 393.063(15)(14), s.
12 394.4572(1), s. 397.451, s. 402.302(8), s. 402.313(3), s.
13 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or
14 chapter 400; or
15 6. Is seeking to be employed or licensed by the Office
16 of Teacher Education, Certification, Staff Development, and
17 Professional Practices of the Department of Education, any
18 district school board, or any local governmental entity which
19 licenses child care facilities.

20 Section 86. Section 455.661, Florida Statutes, is
21 repealed.

22 Section 87. Two full-time positions are allocated to
23 the Agency for Health Care Administration to implement and
24 administer a background screening exemption program pursuant
25 to section 400.4174, Florida Statutes, as amended by this act,
26 section 400.5572, Florida Statutes, as created by this act,
27 and chapter 435, Florida Statutes, and the sum of \$127,609 is
28 appropriated from the Health Care Trust Fund for this purpose.

29 Section 88. The provisions of this act which require
30 an applicant for licensure, certification, or registration to
31 undergo background screening shall apply to any individual or

1 entity that applies, on or after July 1, 1998, for renewal of
2 a license, certificate, or registration that is subject to the
3 background screening required by this act.

4 Section 89. This act shall take effect July 1 of the
5 year in which enacted.

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