

By the Committee on Health Care and Senator Forman

317-1655B-98

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, 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; amending s. 393.067, F.S.;
4 requiring background screening for an applicant
5 for licensure to operate an intermediate care
6 facility for the developmentally disabled;
7 amending s. 394.4787, F.S., relating to the
8 regulation of mental health facilities;
9 conforming a cross-reference 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, 394.907, F.S., relating to
19 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,
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, 400.462,
13 F.S., relating to the regulation of home health
14 agencies; conforming a cross-reference;
15 revising definitions; amending s. 400.464,
16 F.S.; revising licensure requirements for home
17 health agencies; specifying services and
18 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 requiring background screening for an applicant
5 for licensure of a nurse registry; amending s.
6 400.509, F.S.; requiring background screening
7 for an applicant for registration as a service
8 provider who is exempt from licensure; amending
9 s. 400.512, F.S.; revising screening
10 requirements for home health agency personnel;
11 amending s. 400.555, F.S.; requiring background
12 screening for an applicant for licensure of an
13 adult day care center; amending s. 400.556,
14 F.S., relating to disciplinary actions against
15 adult day care center licensees; making
16 noncompliance with background screening
17 requirements a basis for disciplinary action;
18 amending s. 400.557, F.S., relating to renewal
19 of an adult day care center license; requiring
20 an affidavit of compliance with background
21 screening requirements when a license is
22 renewed; creating s. 400.5572, F.S.; requiring
23 background screening for employees of an adult
24 day care center hired on or after a specified
25 date; amending s. 400.606, F.S.; requiring
26 background screening for an applicant for
27 licensure of a hospice; creating s. 400.6065,
28 F.S.; providing requirements for background
29 screening of hospice employees; amending s.
30 400.607, F.S., relating to disciplinary actions
31 against a hospice license; making noncompliance

1 with background screening requirements a basis
2 for disciplinary action; amending s. 400.619,
3 F.S.; revising background screening
4 requirements for an applicant for licensure of
5 an adult family care home; providing screening
6 requirements for designated relief persons;
7 deleting agency authority to take disciplinary
8 action against an adult family-care-home
9 license; revising rulemaking authority;
10 creating s. 400.6194, F.S.; providing for
11 disciplinary action against an adult
12 family-care-home license; making noncompliance
13 with screening requirements a basis for
14 disciplinary action; amending s. 400.801, F.S.;
15 requiring background screening for an applicant
16 for licensure of a home for special services;
17 amending s. 400.805, F.S.; requiring background
18 screening for an applicant for licensure of a
19 transitional living facility; amending s.
20 430.04, F.S.; providing duties and
21 responsibilities of the Department of Elderly
22 Affairs; requiring the department to take
23 disciplinary action against an area agency on
24 aging for failure to implement and maintain a
25 department-approved grievance resolution
26 procedure; amending s. 455.654, F.S., relating
27 to referring health care providers; conforming
28 cross-references to changes made by the act;
29 amending s. 468.505, F.S., relating to
30 disciplinary action against certain medical
31 professionals and activities exempt from

1 regulation; updating provisions and conforming
2 cross-references; amending s. 483.101, F.S.;
3 requiring background screening for an applicant
4 for licensure of a clinical laboratory;
5 amending s. 483.106, F.S., relating to a
6 certificate of exemption; correcting
7 terminology; amending s. 483.30, F.S.;
8 requiring background screening for an applicant
9 for licensure of a multiphasic health testing
10 center; repealing s. 455.661, F.S., which
11 provides for licensure of designated health
12 care services; providing appropriations and
13 authorizing positions; providing for
14 applicability of background screening
15 requirements; providing an effective date.
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17 Be It Enacted by the Legislature of the State of Florida:
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19 Section 1. Subsection (12) and paragraph (b) of
20 subsection (13) of section 112.0455, Florida Statutes, are
21 amended to read:

22 112.0455 Drug-Free Workplace Act.--

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

24 (a) A laboratory may analyze initial or confirmation
25 drug specimens only if:

26 1. The laboratory is licensed and approved by the
27 Agency for Health Care Administration using criteria
28 established by the United States Department of Health and
29 Human Services as general guidelines for modeling the state
30 drug testing program. Each applicant for licensure must comply
31 with the following requirements:

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

12 b. The agency may require background screening of any
13 other individual who is an applicant if the agency has
14 probable cause to believe that he or she has been convicted of
15 an offense prohibited under the level 2 standards for
16 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 licensure requirements of this state is acceptable
21 in fulfillment of screening requirements.

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

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

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

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

1 corporation or organization's board of directors, and has no
2 financial interest and has no family members with a financial
3 interest in the corporation or organization, provided that the
4 director and the not-for-profit corporation or organization
5 include in the application a statement affirming that the
6 director's relationship to the corporation satisfies the
7 requirements of this sub-subparagraph.

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

15 h. The agency may deny or revoke licensure if the
16 applicant:

17 (I) Has falsely represented a material fact in the
18 application required by sub-subparagraph e. or
19 sub-subparagraph f., or has omitted any material fact from the
20 application required by sub-subparagraph e. or
21 sub-subparagraph f.; or

22 (II) Has had prior action taken against the applicant
23 under the Medicaid or Medicare program as set forth in
24 sub-subparagraph e.

25 i. An application for license renewal must contain the
26 information required under sub-subparagraphs e. and f.

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

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

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1 a. The use of internal quality controls including the
2 use of samples of known concentrations which are used to check
3 the performance and calibration of testing equipment, and
4 periodic use of blind samples for overall accuracy.

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

8 c. Security measures implemented by the testing
9 laboratory to preclude adulteration of specimens and drug test
10 results.

11 d. Other necessary and proper actions taken to ensure
12 reliable and accurate drug test results.

13 (b) A laboratory shall disclose to the employer a
14 written test result report within 7 working days after receipt
15 of the sample. All laboratory reports of a drug test result
16 shall, at a minimum, state:

17 1. The name and address of the laboratory which
18 performed the test and the positive identification of the
19 person tested.

20 2. Positive results on confirmation tests only, or
21 negative results, as applicable.

22 3. A list of the drugs for which the drug analyses
23 were conducted.

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

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

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1 No report shall disclose the presence or absence of any drug
2 other than a specific drug and its metabolites listed pursuant
3 to this section.

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

14 (d) Laboratories shall provide technical assistance to
15 the employer, employee, or job applicant for the purpose of
16 interpreting any positive confirmed test results which could
17 have been caused by prescription or nonprescription medication
18 taken by the employee or job applicant.

19 (13) RULES.--

20 (b) The following standards and procedures are
21 established related to hair testing:

22 1. Hair cutoff levels for initial drug-screening
23 tests.--The following initial cutoff levels must be used when
24 screening hair specimens to determine whether they are
25 negative for these drugs or their metabolites:

26 a. Marijuana: 10 pg/10 mg of hair;

27 b. Cocaine: 5 ng/10 mg of hair; and

28 c. Opiate/synthetic narcotics and metabolites: 5
29 ng/10 mg of hair. For the purpose of this section, opiate and
30 metabolites include the following:

31 (I) Codeine;

1 (II) Heroin, monoacetylmorphine ~~monoacetylmorphine~~
2 (heroin metabolites);
3 (III) Morphine;
4 d. Phencyclidine: 3 ng/10 mg of hair; and
5 e. Amphetamines: 5 ng/10 mg of hair. For the purpose
6 of this section, amphetamines include the following:
7 (I) Amphetamines;
8 (II) Methamphetamine;
9 2. Hair cutoff levels for drug confirmation testing.--
10 a. All specimens identified as positive on the initial
11 test must be confirmed using gas chromatography/mass
12 spectrometry (GC/MS), mass spectrometry/mass spectrometry
13 (MS/MS) at the following cutoff levels for these drugs on
14 their metabolites. All confirmations must be by quantitative
15 analysis.
16 (I) Marijuana metabolites: 1 pg/10 mg of hair
17 (Delta-9-tetrahydrocannabinol-0-carboxylic acid).
18 (II) Cocaine: must be at or above 5 ng/10 mg of hair.
19 Cocaine metabolites if present will be recorded at the
20 following minimum levels:
21 (A) Benzoylcegonine at 1 ng/10 mg of hair; and
22 (B) Cocaethylene at 1 ng/10 mg of hair.
23 (III) Opiate/synthetic narcotics and metabolites: 5
24 ng/10 mg of hair; opiate and metabolites include the
25 following:
26 (A) Codeine;
27 (B) 6-Monoacetylmorphine (heroin metabolite); and
28 (C) Morphine.
29 (IV) Phencyclidine: 3 ng/10 mg of hair.
30 (V) Amphetamines: 5 ng/10 mg of hair. For the
31 purpose of this section, amphetamines include the following:

- 1 (A) Amphetamines; and
2 (B) Methamphetamines.
- 3 b. All hair specimens undergoing confirmation must be
4 decontaminated using a wash procedure which has been published
5 in the peer-reviewed literature which, as a minimum, has an
6 initial 15-minute organic solvent wash followed by multiple
7 (minimum of three) 30-minute aqueous washes.
- 8 c. After hair is washed, the drug entrapped in the
9 hair is released either by digestion (chemical or enzymatic)
10 or by multiple solvent extractions. The resulting digest or
11 pooled solvent extracts are then screened and confirmed by
12 approved methods.
- 13 d. All confirmation analysis methods must eliminate
14 the melanin fraction of the hair before analysis. If a
15 nondigestion method is used, the laboratory must present
16 published data in the peer-reviewed literature from a large
17 population study which indicates that the method of extraction
18 does not possess a statistically significant hair-color bias.
- 19 e. Additional hair samples may be collected to
20 reconfirm the initial report. The recollected sample shall be
21 retested as specified; however, the confirmation analysis must
22 be performed even if the screening test is negative. A second
23 positive report must be made if the drug concentration in the
24 digest by confirmation methods exceeds the limit of
25 quantitation of the testing laboratory's method. A second test
26 must be offered to anyone disputing a positive hair test
27 result.
- 28 3. Hair specimen collection procedures.--
- 29 a. Designation of collection site.--Each drug-testing
30 program shall have one or more designated collection sites
31 which have all necessary personnel, materials, equipment,

1 facilities, and supervision to provide for the collection,
2 security, temporary storage, and shipping or transportation of
3 hair specimens to a licensed drug-testing facility.

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

7 c. Chain of custody.--Chain-of-custody standardized
8 forms shall be properly executed by authorized collection site
9 personnel upon receipt of specimens. Handling and
10 transportation of hair specimens from one authorized
11 individual or place to another shall always be accomplished
12 through chain-of-custody procedures. Every effort shall be
13 made to minimize the number of persons handling specimens.

14 d. Access to authorized personnel only.--The hair
15 collection site need be off limits to unauthorized personnel
16 only during the actual collection of specimens.

17 e. Privacy.--Procedures for collecting hair should be
18 performed on one individual at a time to prevent substitutions
19 or interference with the collection of reliable samples.
20 Procedures must ensure that the hair collection does not
21 infringe on the individual's privacy.

22 f. Integrity and identity of specimen.--Precautions
23 must be taken to ensure that the root end of a hair specimen
24 is indicated for the laboratory which performs the testing.
25 The maximum length of hair that shall be tested is 3.9 cm
26 distal from the head, which on average represents a 3-month
27 time window. The following minimum precautions must be taken
28 when collecting a hair specimen to ensure that specimens are
29 obtained and correctly identified:

30 (I) When an individual arrives at the collection site,
31 the collection site personnel shall request the individual to

1 present photo identification. If the individual does not have
2 proper photo identification, the collection site personnel
3 shall contact the supervisor of the individual, the
4 coordinator of the drug testing program, or any other employer
5 official who can positively identify the individual. If the
6 individual's identity cannot be established, the collection
7 site personnel shall not proceed with the collection.

8 (II) If the individual fails to arrive at the assigned
9 time, the collection site personnel shall contact the
10 appropriate authority to obtain guidance on the action to be
11 taken.

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

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

19 (V) Both the individual being tested and the
20 collection site personnel shall keep the specimen in view at
21 all times prior to the specimen container being sealed with a
22 tamper-resistant seal and labeled with the individual's
23 specimen number and other required information.

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

28 (VII) The individual shall initial the container for
29 the purpose of certifying that it is the specimen collected
30 from the individual.

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1 (VIII) The collection site personnel shall indicate on
2 the chain-of-custody form all information identifying the
3 specimen. The collection site personnel shall sign the
4 chain-of-custody form next to the identifying information or
5 the chain of custody on the specimen container.

6 (IX) The individual must be asked to read and sign a
7 statement certifying that the specimen identified as having
8 been collected from the individual is in fact that specimen
9 the individual provided.

10 (X) The collection site personnel shall complete the
11 chain-of-custody form.

12 g. Collection control.--To the maximum extent
13 possible, collection site personnel shall keep the
14 individual's specimen container within sight both before and
15 after collection. After the specimen is collected, it must be
16 properly sealed and labeled. An approved chain-of-custody form
17 must be used for maintaining control and accountability of
18 each specimen from the point of collection to final
19 disposition of the specimen. The date and purpose must be
20 documented on an approved chain-of-custody form each time a
21 specimen is handled or transferred and every individual in the
22 chain must be identified. Every effort must be made to
23 minimize the number of persons handling specimens.

24 h. Transportation to the testing facility.--Collection
25 site personnel shall arrange to transport the collected
26 specimens to the drug-testing facility. The specimens shall be
27 placed in containers which shall be securely sealed to
28 eliminate the possibility of undetected tampering. The
29 collection site personnel shall ensure that the
30 chain-of-custody documentation is sealed separately from the
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1 specimen and placed inside the container sealed for transfer
2 to the drug-testing facility.

3 4. Quality assurance and quality control.--

4 a. Quality assurance.--Testing facilities shall have a
5 quality assurance program which encompasses all aspects of the
6 testing process, including, but not limited to, specimen
7 acquisition, chain of custody, security and reporting of
8 results, initial and confirmatory testing, and validation of
9 analytical procedures. Quality assurance procedures shall be
10 designed, implemented, and reviewed to monitor the conduct of
11 each step of the process of testing for drugs.

12 b. Quality control.--

13 (I) Each analytical run of specimens to be screened
14 shall include:

15 (A) Hair specimens certified to contain no drug;
16 (B) Hair specimens fortified with known standards; and
17 (C) Positive controls with the drug or metabolite at
18 or near the threshold (cutoff).

19 (II) In addition, with each batch of samples, a
20 sufficient number of standards shall be included to ensure and
21 document the linearity of the assay method over time in the
22 concentration area of the cutoff. After acceptable values are
23 obtained for the known standards, those values must be used to
24 calculate sample data. Implementation of procedures to ensure
25 that carryover does not contaminate the testing of an
26 individual's specimen must be documented. A minimum of 5
27 percent of all test samples must be quality control specimens.
28 The testing facility's quality control samples, prepared from
29 fortified hair samples of determined concentration, must be
30 included in the run and must appear as normal samples to
31 drug-screen testing facility analysis. One percent of each

1 run, with a minimum of at least one sample, must be the
2 testing facility's own quality control samples.

3 5.a. Proficiency testing.--

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

7 (II) The drug-testing facility shall maintain records
8 which document the handling, processing, and examination of
9 all proficiency-testing samples for a minimum of 2 years from
10 the date of testing.

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

15 (IV) The proficiency-testing samples must be included
16 with the routine sample run and tested with the same frequency
17 as unknown samples by the individuals responsible for testing
18 unknown specimens.

19 (V) The drug-testing facility may not engage in
20 discussions or communications concerning proficiency-testing
21 results with other drug-testing facilities, nor may they send
22 proficiency-testing samples or portions of the samples to
23 another drug-testing facility for analysis.

24 b. Satisfactory performance.--

25 (I) The drug-testing facility shall maintain an
26 overall testing-event score equivalent to passing proficiency
27 scores for other drug-testing matrices.

28 (II) Failure to participate in a proficiency-testing
29 event shall result in a score of 0 percent for that testing
30 event.

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1 c. Unsuccessful performance.--Failure to achieve
2 satisfactory performance in two consecutive testing events, or
3 two out of three consecutive testing events, is determined to
4 be unsuccessful performance.

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6 This section shall not be construed to eliminate the
7 bargainable rights as provided in the collective bargaining
8 process where applicable.

9 Section 2. Section 381.60225, Florida Statutes, is
10 created to read:

11 381.60225 Background screening.--

12 (1) Each applicant for certification must comply with
13 the following requirements:

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

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

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

6 (d) A provisional certification may be granted to the
7 organization, agency, or entity when each individual required
8 by this section to undergo background screening has met the
9 standards for the abuse registry background check and the
10 Department of Law Enforcement background check, but the agency
11 has not yet received background screening results from the
12 Federal Bureau of Investigation, or a request for a
13 disqualification exemption has been submitted to the agency as
14 set forth in chapter 435 but a response has not yet been
15 issued. A standard certification may be granted to the
16 organization, agency, or entity upon the agency's receipt of a
17 report of the results of the Federal Bureau of Investigation
18 background screening for each individual required by this
19 section to undergo background screening which confirms that
20 all standards have been met, or upon the granting of a
21 disqualification exemption by the agency as set forth in
22 chapter 435. Any other person who is required to undergo level
23 2 background screening may serve in his or her capacity
24 pending the agency's receipt of the report from the Federal
25 Bureau of Investigation. However, the person may not continue
26 to serve if the report indicates any violation of background
27 screening standards and a disqualification exemption has not
28 been requested of and granted by the agency as set forth in
29 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 control
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) The agency may not certify any organization,
25 agency, or entity if any applicant or managing employee has
26 been found guilty of, regardless of adjudication, or has
27 entered a plea of nolo contendere or guilty to, any offense
28 prohibited under the level 2 standards for screening set forth
29 in chapter 435, unless an exemption from disqualification has
30 been granted by the agency as set forth in chapter 435.

31

1 (h) The agency may deny or revoke certification of any
2 organization, agency, or entity if the 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 program as set forth in
9 paragraph (e).

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

12 (2) An organ procurement organization, tissue bank, or
13 eye bank certified by the Agency for Health Care
14 Administration in accordance with ss. 381.6021 and 381.6022 is
15 not subject to the requirements of this section if the entity
16 has no direct patient-care responsibilities and does not bill
17 patients or insurers directly for services under the Medicare
18 or Medicaid programs, or for privately insured services.

19 Section 3. Section 383.302, Florida Statutes, is
20 amended to read:

21 383.302 Definitions of terms used in ss.
22 383.30-383.335.--As used in ss. 383.30-383.335, ~~unless the~~
23 ~~context otherwise requires,~~the term:

24 (1) "Agency" means the Agency for Health Care
25 Administration.

26 (2)(1) "Birth center" means any facility, institution,
27 or place, which is not an ambulatory surgical center or a
28 hospital or in a hospital, in which births are planned to
29 occur away from the mother's usual residence following a
30 normal, uncomplicated, low-risk pregnancy.

31

1 (3)~~(2)~~ "Clinical staff" means individuals employed
2 full time or part time by a birth center who are licensed or
3 certified to provide care at childbirth.

4 (4)~~(3)~~ "Consultant" means a physician licensed
5 pursuant to chapter 458 or chapter 459 who agrees to provide
6 advice and services to a birth center and who either:

7 (a) Is certified or eligible for certification by the
8 American Board of Obstetrics and Gynecology, or

9 (b) Has hospital obstetrical privileges.

10 ~~(4) "Department" means the Department of Health.~~

11 (5) "Governing body" means any individual, group,
12 corporation, or institution which is responsible for the
13 overall operation and maintenance of a birth center.

14 (6) "Governmental unit" means the state or any county,
15 municipality, or other political subdivision or any
16 department, division, board, or other agency of any of the
17 foregoing.

18 (7) "Licensed facility" means a facility licensed in
19 accordance with s. 383.305.

20 (8) "Low-risk pregnancy" means a pregnancy which is
21 expected to result in an uncomplicated birth, as determined
22 through risk criteria developed by rule of the department, and
23 which is accompanied by adequate prenatal care.

24 (9) "Person" means any individual, firm, partnership,
25 corporation, company, association, institution, or joint stock
26 association and means any legal successor of any of the
27 foregoing.

28 (10) "Premises" means those buildings, beds, and
29 facilities located at the main address of the licensee and all
30 other buildings, beds, and facilities for the provision of
31 maternity care located in such reasonable proximity to the

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

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

5 383.305 Licensure; issuance, renewal, denial,
6 suspension, revocation; fees; background screening.--

7 (1)(a) Upon receipt of an application for a license
8 and the license fee, the agency ~~department~~ shall issue a
9 license if the applicant and facility have received all
10 approvals required by law and meet the requirements
11 established under ss. 383.30-383.335 and by rules promulgated
12 hereunder.

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

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

28 (2) An application for a license, or renewal thereof,
29 shall be made to the agency ~~department~~ upon forms provided by
30 it and shall contain such information as the agency ~~department~~

31

1 reasonably requires, which may include affirmative evidence of
2 ability to comply with applicable laws and rules.

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

10 (b) The fees established pursuant to ss.
11 383.30-383.335 shall be based on actual costs incurred by the
12 agency ~~department~~ in the administration of its duties under
13 such sections.

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

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

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

26 (7) 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 center, and of the financial officer, or other
3 similarly titled individual who is responsible for the
4 financial operation of the center, 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 control
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 program 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 5. Paragraph (a) of subsection (2) of section
23 383.308, Florida Statutes, is amended to read:

24 383.308 Birth center facility and equipment;
25 requirements.--

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

31

1 Section 6. Section 383.309, Florida Statutes, is
2 amended to read:

3 383.309 Minimum standards for birth centers; rules and
4 enforcement.--

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

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

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

18 (c) Construction, maintenance, repair, and renovation
19 of licensed facilities are governed by rules of the agency
20 ~~department~~ which use ~~utilize~~ the most recently adopted,
21 nationally recognized codes wherever feasible. Facilities
22 licensed under s. 383.305 are exempt from local construction
23 standards to the extent that those standards are in conflict
24 with the standards adopted by rule of the agency ~~department~~.

25 (d) Licensed facilities are established, organized,
26 and operated consistent with established programmatic
27 standards.

28 (2) Any licensed facility ~~that~~ which is in operation
29 at the time of adoption ~~promulgation~~ of any applicable rule
30 under ss. 383.30-383.335 shall be given a reasonable time
31 under the particular circumstances, not to exceed 1 year after

1 ~~from~~ the date of such adoption promulgation, within which to
2 comply with such rule.

3 Section 7. Paragraph (b) of subsection (1) and
4 paragraph (b) of subsection (2) of section 383.31, Florida
5 Statutes, are amended to read:

6 383.31 Selection of clients; informed consent.--

7 (1)

8 (b) The criteria for the selection of clients and the
9 establishment of risk status shall be defined by rule of the
10 agency department.

11 (2)

12 (b) The agency department shall develop a client
13 informed-consent form to be used by the center to inform the
14 client of the benefits and risks related to childbirth outside
15 a hospital.

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

18 383.312 Prenatal care of birth center clients.--

19 (1) A birth center shall ensure that its clients have
20 adequate prenatal care, as defined by the agency department,
21 and shall ensure that serological tests are administered as
22 required by this chapter.

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

25 383.313 Performance of laboratory and surgical
26 services; use of anesthetic and chemical agents.--

27 (1) LABORATORY SERVICES.--A birth center may collect
28 specimens for those tests that are requested under protocol.
29 A birth center may perform simple laboratory tests, as defined
30 by rule of the agency department, and is exempt from the
31 requirements of chapter 483, provided no more than five

1 physicians are employed by the birth center and testing is
2 conducted exclusively in connection with the diagnosis and
3 treatment of clients of the birth center.

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

6 383.318 Postpartum care for birth center clients and
7 infants.--

8 (1) A mother and her infant shall be dismissed from
9 the birth center within 24 hours after the birth of the
10 infant, except in unusual circumstances as defined by rule of
11 the agency ~~department~~. If a mother or infant is retained at
12 the birth center for more than 24 hours after the birth, a
13 report shall be filed with the agency ~~department~~ within 48
14 hours of the birth describing the circumstances and the
15 reasons for the decision.

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

18 383.32 Clinical records.--

19 (3) Clinical records shall be kept confidential in
20 accordance with s. 455.241 and exempt from the provisions of
21 s. 119.07(1). A client's clinical records shall be open to
22 inspection only under the following conditions:

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

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

27 Section 12. Section 383.324, Florida Statutes, is
28 amended to read:

29 383.324 Inspections and investigations; inspection
30 fees.--

31

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

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

7 (3) The agency ~~department~~ shall coordinate all
8 periodic inspections for licensure made by the agency
9 ~~department~~ to ensure that the cost to the facility of such
10 inspections and the disruption of services by such inspections
11 is minimized.

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

14 383.325 Inspection reports.--

15 (3) A licensed facility shall, upon the request of any
16 person who has completed a written application with intent to
17 be admitted to such facility or any person who is a patient of
18 such facility, or any relative, spouse, or guardian of any
19 such person, furnish to the requester a copy of the last
20 inspection report issued by the agency ~~department~~ or an
21 accrediting organization, whichever is most recent, pertaining
22 to the licensed facility, as provided in subsection (1),
23 provided the person requesting such report agrees to pay a
24 reasonable charge to cover copying costs.

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

27 383.327 Birth and death records; reports.--

28 (4) A report shall be submitted annually to the agency
29 ~~department~~. The contents of the report shall be prescribed by
30 rule of the agency ~~department~~.

31

1 Section 15. Section 383.33, Florida Statutes, is
2 amended to read:

3 383.33 Administrative penalties; emergency orders;
4 moratorium on admissions.--

5 (1)(a) The agency ~~department~~ may deny, revoke, or
6 suspend a license, or impose an administrative fine not to
7 exceed \$500 per violation per day, for the violation of any
8 provision of ss. 383.30-383.335 or any rule adopted under ss.
9 383.30-383.335 ~~promulgated hereunder~~. Each day of violation
10 constitutes a separate violation and is subject to a separate
11 fine.

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

15 1. The severity of the violation, including the
16 probability that death or serious harm to the health or safety
17 of any person will result or has resulted; the severity of the
18 actual or potential harm; and the extent to which the
19 provisions of ss. 383.30-383.335 ~~this act~~ were violated.

20 2. Actions taken by the licensee to correct the
21 violations or to remedy complaints.

22 3. Any previous violations by the licensee.

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

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

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

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

8 383.331 Injunctive relief.--Notwithstanding the
9 existence or pursuit of any other remedy, the agency
10 ~~department~~ may maintain an action in the name of the state for
11 injunction or other process to enforce the provisions of ss.
12 383.30-383.335 and the rules adopted ~~promulgated~~ under such
13 sections.

14 Section 17. Subsection (3) is added to section
15 390.015, Florida Statutes, to read:

16 390.015 Application for license.--

17 (3) Each applicant for licensure must comply with the
18 following requirements:

19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the managing employee, or other similarly
23 titled individual who is responsible for the daily operation
24 of the clinic, and financial officer, or other similarly
25 titled individual who is responsible for the financial
26 operation of the clinic, including billings for patient care
27 and services. The applicant must comply with the procedures
28 for level 2 background screening as set forth in chapter 435,
29 as well as the requirements of s. 435.03(3).

30 (b) The agency may require background screening of any
31 other individual who is an applicant if the agency has

1 probable cause to believe that he or she has been convicted of
2 a crime or has committed any other offense prohibited under
3 the level 2 standards for screening set forth in chapter 435.

4 (c) Proof of compliance with the level 2 background
5 screening requirements of chapter 435 which has been submitted
6 within the previous 5 years in compliance with any other
7 health care licensure requirements of this state is acceptable
8 in fulfillment of the requirements of 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, or a request for a disqualification
16 exemption has been submitted to the agency as set forth in
17 chapter 435 but a response has not yet been issued. A standard
18 license may be granted to the applicant upon the agency's
19 receipt of a report of the results of the Federal Bureau of
20 Investigation background screening for each individual
21 required by this section to undergo background screening which
22 confirms that all standards have been met, or upon the
23 granting of a disqualification exemption by the agency as set
24 forth in chapter 435. Any other person who is required to
25 undergo level 2 background screening may serve in his or her
26 capacity pending the agency's receipt of the report from the
27 Federal Bureau of Investigation. However, the person may not
28 continue to serve if the report indicates any violation of
29 background screening standards and a disqualification
30 exemption has not been requested of and granted by the agency
31 as set forth in chapter 435.

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

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

26 (g) A license may not be granted to an applicant if
27 the applicant or managing employee has been found guilty of,
28 regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

3 (h) The agency may deny or revoke licensure if the
4 applicant:

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

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

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

14 Section 18. Subsection (5) is added to section
15 391.206, Florida Statutes, to read:

16 391.206 Initial application for license.--

17 (5) Each applicant for licensure must comply with the
18 following requirements:

19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the operator, and of the financial officer,
23 or other similarly titled individual who is responsible for
24 the financial operation of the center, including billings for
25 patient care and services. The applicant must comply with the
26 procedures for level 2 background screening as set forth in
27 chapter 435, as well as the requirements of s. 435.03(3).

28 (b) The agency may require background screening of any
29 other individual who is an applicant if the agency has a
30 reasonable basis for believing that he or she has been
31 convicted of a crime or has committed any other offense

1 prohibited under the level 2 standards for screening set forth
2 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 licensure requirements of this state is acceptable
7 in fulfillment of the requirements of paragraph (a).

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

31

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

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

26 (g) A license may not be granted to an applicant if
27 the applicant or managing employee has been found guilty of,
28 regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

3 (h) The agency may deny or revoke licensure if the
4 applicant:

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

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

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

14 Section 19. Present subsections (2) through (53) of
15 section 393.063, Florida Statutes, are renumbered as
16 subsections (3) through (54), respectively, and a new
17 subsection (2) is added to that section, to read:

18 393.063 Definitions.--For the purposes of this
19 chapter:

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

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

26 393.067 Licensure of residential facilities and
27 comprehensive transitional education programs.--

28 (6) Each applicant for licensure as an intermediate
29 care facility for the developmentally disabled must comply
30 with the following requirements:

31

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

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

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

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

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

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

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

1 corporation or organization's board of directors, and has no
2 financial interest and has no family members with a financial
3 interest in the corporation or organization, provided that the
4 director and the not-for-profit corporation or organization
5 include in the application a statement affirming that the
6 director's relationship to the corporation satisfies the
7 requirements of this paragraph.

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

15 (h) The agency may deny or revoke licensure if the
16 applicant:

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

21 2. Has had prior action taken against the applicant
22 under the Medicaid or Medicare program as set forth in
23 paragraph (e).

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

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

28 394.4787 Definitions.--As used in this section and ss.
29 394.4786, 394.4788, and 394.4789:

30
31

1 (7) "Specialty psychiatric hospital" means a hospital
2 licensed by the agency pursuant to s. 395.002(30)~~s.~~
3 ~~395.002(27)~~ as a specialty psychiatric hospital.

4 Section 22. Section 394.67, Florida Statutes, is
5 amended to read:

6 394.67 Definitions.--~~As when~~ used in this part, ~~unless~~
7 ~~the context clearly requires otherwise,~~ the term:

8 (1) "Advisory council" means a district advisory
9 council.

10 (2) "Agency" means the Agency for Health Care
11 Administration.

12 ~~(2) "Alcohol, drug abuse, and mental health planning~~
13 ~~council" or "council" means the council within a Department of~~
14 ~~Health and Rehabilitative Services district or subdistrict~~
15 ~~established in accordance with the provisions of this part for~~
16 ~~the purpose of assessing the alcohol, drug abuse, and mental~~
17 ~~health needs of the community and developing a plan to address~~
18 ~~those needs.~~

19 (3) "Applicant" means an individual applicant, or any
20 officer, director, agent, managing employee, or affiliated
21 person, or any partner or shareholder having an ownership
22 interest equal to a 5-percent or greater interest in the
23 corporation, partnership, or other business entity.

24 (4) "Client" means any individual receiving services
25 in any alcohol, drug abuse, or mental health facility,
26 program, or service, which facility, program, or service is
27 operated, funded, or regulated by the agency and the
28 department or regulated by the agency.

29 (5) "Crisis stabilization unit" means a program that
30 provides an alternative to inpatient hospitalization and that
31 provides brief, intensive services 24 hours a day, 7 days a

1 week, for mentally ill individuals who are in an acutely
2 disturbed state.

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

5 (7) "Director" means any member of the official board
6 of directors reported in the organization's annual corporate
7 report to the Florida Department of State, or, if no such
8 report is made, any member of the operating board of
9 directors. The term excludes members of separate, restricted
10 boards that serve only in an advisory capacity to the
11 operating board.

12 (8)(4) "District administrator" means the person
13 appointed by the Secretary of Children and Family Health and
14 Rehabilitative Services for the purpose of administering a
15 department service district as set forth in s. 20.19.

16 (9)(5) "District plan" or "plan" means the combined
17 district alcohol, drug abuse, and mental health plan prepared
18 by the alcohol, drug abuse, and mental health planning council
19 and approved by the district administrator and governing
20 bodies in accordance with this part.

21 (10)(6) "Federal funds" means funds from federal
22 sources for alcohol, drug abuse, or mental health facilities
23 and programs, exclusive of federal funds that are deemed
24 eligible by the Federal Government, and are eligible through
25 state regulation, for matching purposes.

26 (11)(7) "Governing body" means the chief legislative
27 body of a county, a board of county commissioners, or boards
28 of county commissioners in counties acting jointly, or their
29 counterparts in a charter government.

30 (12) "Licensed facility" means a facility licensed in
31 accordance with this chapter.

1 (13)~~(8)~~ "Local matching funds" means funds received
2 from governing bodies of local government, including city
3 commissions, county commissions, district school boards,
4 special tax districts, private hospital funds, private gifts,
5 both individual and corporate, and bequests and funds received
6 from community drives or any other sources.

7 (14) "Managing employee" means the administrator or
8 other similarly titled individual who is responsible for the
9 daily operation of the facility.

10 (15)~~(9)~~ "Patient fees" means compensation received by
11 a community alcohol, drug abuse, or mental health facility for
12 services rendered to clients from any source of funds,
13 including city, county, state, federal, and private sources.

14 (16) "Premises" means those buildings, beds, and
15 facilities located at the main address of the licensee and all
16 other buildings, beds, and facilities for the provision of
17 acute or residential care which are located in such reasonable
18 proximity to the main address of the licensee as to appear to
19 the public to be under the dominion and control of the
20 licensee.

21 (17)~~(10)~~ "Program office" means the Alcohol, Drug
22 Abuse, and Mental Health Program Office of the Department of
23 Children and Family Health and Rehabilitative Services.

24 (18) "Residential treatment facility" means a facility
25 providing residential care and treatment to individuals
26 exhibiting symptoms of mental illness who are in need of a
27 24-hour-per-day, 7-day-a-week structured living environment,
28 respite care, or long-term community placement.

29 (19)~~(11)~~ "Service district" means a community service
30 district as established by the department under s. 20.19 for
31

1 the purpose of providing community alcohol, drug abuse, and
2 mental health services.

3 (20)~~(12)~~ "Service provider" means any agency in which
4 all or any portion of the programs or services set forth in s.
5 394.675 are carried out.

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

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

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

20 ~~(16) "Premises" means those buildings, beds, and~~
21 ~~facilities located at the main address of the licensee and all~~
22 ~~other buildings, beds, and facilities for the provision of~~
23 ~~acute or residential care located in such reasonable proximity~~
24 ~~to the main address of the licensee as to appear to the public~~
25 ~~to be under the dominion and control of the licensee.~~

26 ~~(17) "Client" means any individual receiving services~~
27 ~~in any alcohol, drug abuse, or mental health facility,~~
28 ~~program, or service, which facility, program, or service is~~
29 ~~operated, funded, or regulated by the Department of Health and~~
30 ~~Rehabilitative Services.~~

31

1 Section 23. Section 394.875, Florida Statutes, is
2 amended to read:

3 394.875 Crisis stabilization units and residential
4 treatment facilities; authorized services; license required;
5 penalties.--

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

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

21 (2) ~~After July 1, 1986,~~It is unlawful for any entity
22 to hold itself out as a crisis stabilization unit or a
23 residential treatment facility, or to act as a crisis
24 stabilization unit or a residential treatment facility, unless
25 it is licensed by the agency ~~department~~ pursuant to this
26 chapter.

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

30 (4) The agency ~~department~~ may maintain an action in
31 circuit court to enjoin the unlawful operation of a crisis

1 stabilization unit or a residential treatment facility if the
2 agency ~~department~~ first gives the violator 14 days' notice of
3 its intention to maintain such action and if the violator
4 fails to apply for licensure within such 14-day period.

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

6 (a) Homes for special services licensed under chapter
7 400;

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

9 (c) Residential child caring facilities licensed under
10 s. 409.175.

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

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

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

30 (9) A children's crisis stabilization unit which does
31 not exceed 20 licensed beds and which provides separate

1 facilities or a distinct part of a facility, separate
2 staffing, and treatment exclusively for minors may be located
3 on the same premises as a crisis stabilization unit serving
4 adults. The department, in consultation with the agency,
5 shall adopt ~~promulgate~~ rules governing facility construction,
6 staffing and licensure requirements, and the operation of such
7 units for minors.

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

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

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

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

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

29 (d) The number of beds to be licensed under chapter
30 394 is equal to or less than the number of beds licensed under
31 chapters 396 and 397 as of January 1, 1993.

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

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

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

24
25 Any facility licensed under this subsection is not required to
26 provide any services to any persons except those included in
27 the specified conditions of licensure, and is exempt from any
28 requirements related to the 60-day or greater average length
29 of stay imposed on community-based residential treatment
30 facilities otherwise licensed under this chapter.

31

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

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

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

23 (d) A provisional license may be granted to an
24 applicant when each individual required by this section to
25 undergo background screening has met the standards for the
26 abuse registry background check and the Department of Law
27 Enforcement background check, but the agency has not yet
28 received background screening results from the Federal Bureau
29 of Investigation, or a request for a disqualification
30 exemption has been submitted to the agency as set forth in
31 chapter 435 but a response has not yet been issued. A standard

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

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

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

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

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

16 (h) The agency may deny or revoke licensure if the
17 applicant:

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

22 2. Has had prior action taken against the applicant
23 under the Medicaid or Medicare program as set forth in
24 paragraph (e).

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

27 Section 24. Section 394.876, Florida Statutes, is
28 amended to read:

29 394.876 Applications.--

30 (1) Any person desiring to be licensed under this
31 chapter shall apply to the agency ~~department~~ on forms provided

1 by the agency ~~department~~. The application shall contain the
2 following:

3 (a) The name and address of the applicant, the name of
4 the unit or facility, and the address of the unit or facility.

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

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

13 ~~(c) Such information as the department determines to~~
14 ~~be necessary to establish the character and competency of the~~
15 ~~applicant and of the person who is or will be administrator of~~
16 ~~the unit or facility.~~

17 (c)(d) Such information as the department and the
18 agency find ~~determines~~ necessary to determine the ability of
19 the applicant to carry out its responsibilities under this
20 chapter.

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

28 (3) The applicant shall provide proof of liability
29 insurance coverage in amounts set by the department and the
30 agency by rule.

31

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

5 Section 25. Section 394.877, Florida Statutes, is
6 amended to read:

7 394.877 Fees.--

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

13 (2) All fees collected under this section shall be
14 deposited in the ~~Mental Health Care Facility Licensing~~ Trust
15 Fund.

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

18 394.878 Issuance and renewal of licenses.--

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

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

27 (5) The agency ~~department~~ may issue a probationary
28 license to an applicant that has completed the application
29 requirements of this chapter but has not, at the time of the
30 application, developed an operational crisis stabilization
31 unit or residential treatment facility. The probationary

1 license shall expire 90 days after issuance and may once be
2 renewed for an additional 90-day period. The ~~agency department~~
3 may cancel a probationary license at any time.

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

10 Section 27. Section 394.879, Florida Statutes, is
11 amended to read:

12 394.879 Rules; enforcement.--

13 (1) The department, in consultation with the agency,
14 shall adopt reasonable rules to implement this chapter,
15 including, at a minimum, rules providing standards to ensure
16 that:

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

20 (b) Adequate space is provided each client of a
21 licensed facility.

22 (c) Licensed facilities are limited to an appropriate
23 number of beds.

24 (d) Each licensee establishes and implements adequate
25 infection control, housekeeping, sanitation, disaster
26 planning, and medical recordkeeping.

27 (e) Licensed facilities are established, organized,
28 and operated in accordance with programmatic standards of the
29 department.

30 (2) Minimum firesafety standards shall be established
31 and enforced by the State Fire Marshal in cooperation with the

1 department. Such standards shall be included in the rule
2 adopted by the department after consultation with the State
3 Fire Marshal.

4 (3) The department, in consultation with the agency,
5 shall allow any licensed facility in operation at the time of
6 adoption of any rule a reasonable period, not to exceed 1
7 year, to bring itself into compliance with such rule.

8 (4) The agency ~~department~~ may impose an administrative
9 penalty of no more than \$500 per day against any licensee that
10 violates any rule adopted pursuant to this section and may
11 suspend or revoke the license or deny the renewal application
12 of such licensee. In imposing such penalty, the agency
13 ~~department~~ shall consider the severity of the violation,
14 actions taken by the licensee to correct the violation, and
15 previous violations by the licensee. Fines collected under
16 this subsection shall be deposited in the Mental Health
17 Facility Licensing Trust Fund.

18 Section 28. Section 394.90, Florida Statutes, is
19 amended to read:

20 394.90 Inspection; right of entry; records.--

21 (1)(a) The department and the agency may enter and
22 inspect at any time a licensed facility to determine whether
23 the facility is in compliance with this chapter and the rules
24 of the department.

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

31

1 (c) Any application for licensure under this chapter
2 constitutes full permission for the department and the agency
3 to enter and inspect the premises of the applicant or licensee
4 at any time.

5 (2) For purposes of monitoring and investigation, the
6 department and the Agency for Health Care Administration shall
7 have access to the clinical records of any client of a
8 licensee or designated facility, the provisions of s. 394.4615
9 to the contrary notwithstanding.

10 (3) The agency ~~department~~ shall schedule periodic
11 inspections of licensees so as to minimize the cost to the
12 licensees and the disruption of the licensees' programs. This
13 subsection shall not be construed to limit the authority of
14 the department and the agency to inspect the facilities of a
15 licensee at any time.

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

23 (5)(a) The agency ~~department~~ may accept, in lieu of
24 its own inspections for licensure, the survey or inspection of
25 an accrediting organization, if the provider is accredited and
26 the agency ~~department~~ receives the report of the accrediting
27 organization. The department, in consultation with the agency,
28 shall develop, and adopt by rule, specific criteria for
29 assuring that the accrediting organization has specific
30 standards and experience related to the program area being
31 licensed, specific criteria for accepting the standards and

1 survey methodologies of an accrediting organization,
2 delineations of the obligations of accrediting organizations
3 to assure adherence to those standards, criteria for
4 receiving, accepting and maintaining the confidentiality of
5 the survey and corrective action reports, and allowance for
6 the agency's ~~department's~~ participation in surveys.

7 (b) The agency ~~department~~ shall conduct compliance
8 investigations and sample validation inspections to evaluate
9 the inspection process of accrediting organizations to ensure
10 minimum standards are maintained as provided in Florida
11 statute and rule. The agency ~~department~~ may conduct a
12 lifesafety inspection in calendar years in which an
13 accrediting organization survey is not conducted and shall
14 conduct a full state inspection, including a lifesafety
15 inspection, if an accrediting organization survey has not been
16 conducted within the previous 36 months. The agency
17 ~~department~~, by accepting the survey or inspection of an
18 accrediting organization, does not forfeit its right to
19 perform inspections.

20 Section 29. Section 394.902, Florida Statutes, is
21 amended to read:

22 394.902 Denial, suspension, and revocation; other
23 remedies.--

24 (1) The agency ~~department~~ may issue an emergency order
25 suspending or revoking a license if the agency ~~department~~
26 determines that the continued operation of the licensed
27 facility presents a clear and present danger to the public
28 health or safety.

29 (2) The agency ~~department~~ may impose a moratorium on
30 elective admissions to a licensee or any program or portion of
31 a licensed facility if the agency ~~department~~ determines that

1 any condition in the facility presents a threat to the public
2 health or safety.

3 (3) If the agency ~~department~~ determines that an
4 applicant or licensee is not in compliance with this chapter
5 or the rules adopted under this chapter, the agency ~~department~~
6 may deny, suspend, or revoke the license or application or may
7 suspend, revoke, or impose reasonable restrictions on any
8 portion of the license. If a license is revoked, the licensee
9 is barred from submitting any application for licensure to the
10 agency ~~department~~ for a period of 6 months following
11 revocation.

12 (4) The agency ~~department~~ may maintain an action in
13 circuit court to enjoin the operation of any licensed or
14 unlicensed facility in violation of this chapter or the rules
15 adopted under this chapter.

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

18 Section 30. Subsections (1), (2), and (11) of section
19 394.903, Florida Statutes, are amended to read:

20 394.903 Receivership proceedings.--

21 (1) The agency, independently or in conjunction with
22 the department may petition a court of competent jurisdiction
23 for the appointment of a receiver for a crisis stabilization
24 unit or a residential treatment facility when any of the
25 following conditions exist:

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

29 (b) The licensee is closing the unit or facility or
30 has informed the agency ~~department~~ that it intends to close
31 and adequate arrangements have not been made for relocation of

1 the residents within 7 days, exclusive of weekends and
2 holidays, of the closing of the unit or facility.

3 (c) The agency ~~department~~ determines that conditions
4 exist in the unit or facility which present an imminent danger
5 to the health, safety, or welfare of the residents of the unit
6 or facility or a substantial probability that death or serious
7 physical harm would result therefrom. The agency ~~department~~
8 shall, whenever possible, facilitate the continued operation
9 of the program.

10 (d) The licensee cannot meet its financial obligations
11 for providing food, shelter, care, and utilities. Issuance of
12 bad checks or accumulation of delinquent bills for such items
13 as personnel salaries, food, drugs, or utilities constitutes
14 ~~shall constitute~~ prima facie evidence that the ownership of
15 the unit or facility lacks the financial ability to operate
16 the unit or facility in accordance with the requirements of
17 this chapter and all rules adopted under this chapter
18 hereunder.

19 (2) Petitions for receivership shall take precedence
20 over other court business unless the court determines that
21 some other pending proceeding, having similar statutory
22 precedence, shall have priority. A hearing shall be conducted
23 within 5 days after ~~of~~ the filing of the petition, at which
24 time all interested parties shall have the opportunity to
25 present evidence pertaining to the petition. The agency
26 ~~department~~ shall notify the owner or operator of the unit or
27 facility named in the petition of its filing and the dates for
28 the hearing. The court shall grant the petition only upon
29 finding that the health, safety, and welfare of residents of
30 the unit or facility would be threatened if a condition
31 existing at the time the petition was filed is permitted to

1 continue. A receiver shall not be appointed ex parte unless
2 the court determines that one or more of the conditions of
3 subsection (1) exist and that the owner or operator cannot be
4 found, that all reasonable means of locating the owner or
5 operator and notifying him or her of the petition and hearing
6 have been exhausted, or that the owner or operator after
7 notification of the hearing chooses not to attend. After such
8 findings, the court may appoint any person qualified by
9 education, training, or experience to carry out the
10 responsibilities of receiver pursuant to this section, except
11 that it shall not appoint any owner or affiliate of the unit
12 or facility which is in receivership. Prior to the
13 appointment as receiver of a person who is the operator,
14 manager, or supervisor of another unit or facility, the court
15 shall determine that the person can reasonably operate,
16 manage, or supervise more than one unit or facility. The
17 receiver may be appointed for up to 90 days, with the option
18 of petitioning the court for 30-day extensions. The receiver
19 may be selected from a list of persons qualified to act as
20 receivers developed by the agency department and presented to
21 the court with each petition for receivership. ~~Under no~~
22 ~~circumstances shall~~ The agency or department or a designated
23 ~~departmental~~ employee of either, may not be appointed as a
24 receiver for more than 60 days; however, such ~~the departmental~~
25 receiver may petition the court for 30-day extensions. The
26 agency department may petition the court to appoint a
27 substitute receiver. The court shall grant the extension upon
28 a showing of good cause. During the first 60 days of the
29 receivership, the agency may department ~~shall not~~ take action
30 to decertify or revoke the license of a unit or facility
31 unless conditions causing imminent danger to the health and

1 welfare of the residents exist and a receiver has been unable
2 to remove those conditions. After the first 60 days of
3 receivership, and every 60 days thereafter until the
4 receivership is terminated, the agency ~~department~~ shall submit
5 to the court the results of an assessment of the unit's or
6 facility's ability to assure the safety and care of the
7 residents. If the conditions at the unit or facility or the
8 intentions of the owner indicate that the purpose of the
9 receivership is to close the unit or facility rather than to
10 facilitate its continued operations, the department, in
11 consultation with the agency, shall place the residents in
12 appropriate alternative residential settings as quickly as
13 possible. If, in the opinion of the court, the agency
14 ~~department~~ has not been diligent in its efforts to make
15 adequate placement arrangements, the court may find the agency
16 ~~department~~ to be in contempt and shall order the agency
17 ~~department~~ to submit its plans for moving the residents.

18 (11) Nothing in this section shall be construed to
19 relieve any owner, operator, or employee of a unit or facility
20 placed in receivership of any civil or criminal liability
21 incurred, or any duty imposed by law, by reason of acts or
22 omissions of the owner, operator, or employee prior to the
23 appointment of a receiver; nor shall anything contained in
24 this section be construed to suspend during the receivership
25 any obligation of the owner, operator, or employee for payment
26 of taxes or other operating and maintenance expenses of the
27 unit or facility or of the owner, operator, or employee or any
28 other person for the payment of mortgages or liens. The owner
29 shall retain the right to sell or mortgage any unit or
30 facility under receivership, subject to approval of the court
31 which ordered the receivership. Receivership imposed under

1 the provisions of this chapter shall be subject to the ~~Mental~~
2 ~~Health Care Facility Licensing~~ Trust Fund pursuant to s.
3 394.904. The owner of a facility placed in receivership by
4 the court shall be liable for all expenses and costs incurred
5 by the ~~Mental Health Care Facility Licensing~~ Trust Fund which
6 occur as a result of the receivership.

7 Section 31. Section 394.904, Florida Statutes, is
8 amended to read:

9 394.904 ~~Mental Health Care Facility Licensing~~ Trust
10 Fund.--There is created in the State Treasury the ~~Mental~~
11 ~~Health Care Facility Licensing~~ Trust Fund. All moneys
12 collected by the agency ~~department~~ pursuant to this chapter
13 shall be deposited in the trust fund. Moneys in the trust
14 fund shall be appropriated to the agency ~~department~~ for the
15 purpose of covering the cost of regulation of facilities
16 licensed under this chapter and any other purpose related to
17 enforcement of this chapter.

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

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

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

27 (2) ~~Effective April 1, 1989,~~ Any community mental
28 health center and any facility licensed pursuant to s. 394.875
29 shall have an ongoing quality assurance program. The purpose
30 of the quality assurance program shall be to objectively and
31 systematically monitor and evaluate the appropriateness and

1 quality of client care, to ensure that services are rendered
2 consistent with reasonable, prevailing professional standards
3 and to resolve identified problems.

4 (3) Each facility shall develop a written plan that
5 ~~which~~ addresses the minimum guidelines for the quality
6 assurance program. Such guidelines shall include, but are not
7 limited to:

8 (a) Standards for the provision of client care and
9 treatment practices;

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

11 (c) Policies and procedures for staff development;

12 (d) Standards for facility safety and maintenance;

13 (e) Procedures for peer review and resource
14 utilization;

15 (f) Policies and procedures for adverse incident
16 reporting to include verification of corrective action to
17 remediate or minimize incidents and for reporting such
18 incidents to the department by a timeframe as prescribed by
19 rule.

20

21 Such plan shall be submitted to the governing board for
22 approval and a copy provided to the department.

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

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

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

14 (9) ~~The provisions of~~ This section does ~~shall~~ not
15 apply to hospitals licensed pursuant to chapter 395 or
16 programs operated within such hospitals.

17 Section 33. Section 395.002, Florida Statutes, is
18 amended to read:

19 395.002 Definitions.--As used in this chapter:

20 (1) "Accrediting organizations" means the Joint
21 Commission on Accreditation of Healthcare Organizations, the
22 American Osteopathic Association, the Commission on
23 Accreditation of Rehabilitation Facilities, and the
24 Accreditation Association for Ambulatory Health Care, Inc.

25 (2) "Adverse or untoward incident," for purposes of
26 reporting to the agency, means an event over which health care
27 personnel could exercise control, which is probably associated
28 in whole or in part with medical intervention rather than the
29 condition for which such intervention occurred, and which
30 causes injury to a patient, and which:

31

1 (a) Is not consistent with or expected to be a
2 consequence of such medical intervention;

3 (b) Occurs as a result of medical intervention to
4 which the patient has not given his or her informed consent;

5 (c) Occurs as the result of any other action or lack
6 of any other action on the part of the hospital or personnel
7 of the hospital;

8 (d) Results in a surgical procedure being performed on
9 the wrong patient; or

10 (e) Results in a surgical procedure being performed
11 that is unrelated to the patient's diagnosis or medical needs.

12 (3) "Agency" means the Agency for Health Care
13 Administration.

14 (4) "Ambulatory surgical center" means a facility the
15 primary purpose of which is to provide elective surgical care,
16 in which the patient is admitted to and discharged from such
17 facility within the same working day and is not permitted to
18 stay overnight, and which is not part of a hospital. However,
19 a facility existing for the primary purpose of performing
20 terminations of pregnancy, an office maintained by a physician
21 for the practice of medicine, or an office maintained for the
22 practice of dentistry shall not be construed to be an
23 ambulatory surgical center, provided that any facility or
24 office which is certified or seeks certification as a Medicare
25 ambulatory surgical center shall be licensed as an ambulatory
26 surgical center pursuant to s. 395.003.

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

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

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

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

9 (9) "Director" means any member of the official board
10 of directors as reported in the organization's annual
11 corporate report to the Florida Department of State, or, if no
12 such report is made, any member of the operating board of
13 directors. The term excludes members of separate, restricted
14 boards that serve only in an advisory capacity to the
15 operating board.

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

17 (a) A medical condition manifesting itself by acute
18 symptoms of sufficient severity, which may include severe
19 pain, such that the absence of immediate medical attention
20 could reasonably be expected to result in any of the
21 following:

- 22 1. Serious jeopardy to patient health, including a
23 pregnant woman or fetus.
24 2. Serious impairment to bodily functions.
25 3. Serious dysfunction of any bodily organ or part.

26 (b) With respect to a pregnant woman:

- 27 1. That there is inadequate time to effect safe
28 transfer to another hospital prior to delivery;
29 2. That a transfer may pose a threat to the health and
30 safety of the patient or fetus; or
31

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

3 (11)~~(9)~~ "Emergency services and care" means medical
4 screening, examination, and evaluation by a physician, or, to
5 the extent permitted by applicable law, by other appropriate
6 personnel under the supervision of a physician, to determine
7 if an emergency medical condition exists and, if it does, the
8 care, treatment, or surgery by a physician necessary to
9 relieve or eliminate the emergency medical condition, within
10 the service capability of the facility.

11 (12)~~(10)~~ "General hospital" means any facility which
12 meets the provisions of subsection(14)~~(12)~~and which
13 regularly makes its facilities and services available to the
14 general population.

15 (13)~~(11)~~ "Governmental unit" means the state or any
16 county, municipality, or other political subdivision, or any
17 department, division, board, or other agency of any of the
18 foregoing.

19 (14)~~(12)~~ "Hospital" means any establishment that:

20 (a) Offers services more intensive than those required
21 for room, board, personal services, and general nursing care,
22 and offers facilities and beds for use beyond 24 hours by
23 individuals requiring diagnosis, treatment, or care for
24 illness, injury, deformity, infirmity, abnormality, disease,
25 or pregnancy; and

26 (b) Regularly makes available at least clinical
27 laboratory services, diagnostic X-ray services, and treatment
28 facilities for surgery or obstetrical care, or other
29 definitive medical treatment of similar extent.

30
31

1 However, the provisions of this chapter do not apply to any
2 institution conducted by or for the adherents of any
3 well-recognized church or religious denomination that depends
4 exclusively upon prayer or spiritual means to heal, care for,
5 or treat any person. For purposes of local zoning matters,
6 the term "hospital" includes a medical office building located
7 on the same premises as a hospital facility, provided the land
8 on which the medical office building is constructed is zoned
9 for use as a hospital; provided the premises were zoned for
10 hospital purposes on January 1, 1992.

11 (15)~~(13)~~ "Hospital bed" means a hospital accommodation
12 which is ready for immediate occupancy, or is capable of being
13 made ready for occupancy within 48 hours, excluding provision
14 of staffing, and which conforms to minimum space, equipment,
15 and furnishings standards as specified by rule of the
16 department for the provision of services specified in this
17 section to a single patient.

18 (16)~~(14)~~ "Initial denial determination" means a
19 determination by a private review agent that the health care
20 services furnished or proposed to be furnished to a patient
21 are inappropriate, not medically necessary, or not reasonable.

22 (17)~~(15)~~ "Injury," for purposes of reporting to the
23 agency, means any of the following outcomes if caused by an
24 adverse or untoward incident:

- 25 (a) Death;
- 26 (b) Brain damage;
- 27 (c) Spinal damage;
- 28 (d) Permanent disfigurement;
- 29 (e) Fracture or dislocation of bones or joints;
- 30 (f) Any condition requiring definitive or specialized
31 medical attention which is not consistent with the routine

1 management of the patient's case or patient's preexisting
2 physical condition;

3 (g) Any condition requiring surgical intervention to
4 correct or control;

5 (h) Any condition resulting in transfer of the
6 patient, within or outside the facility, to a unit providing a
7 more acute level of care;

8 (i) Any condition that extends the patient's length of
9 stay; or

10 (j) Any condition that results in a limitation of
11 neurological, physical, or sensory function which continues
12 after discharge from the facility.

13 (18)~~(16)~~ "Intensive residential treatment programs for
14 children and adolescents" means a specialty hospital
15 accredited by the Joint Commission on Accreditation of
16 Healthcare Organizations which provides 24-hour care and which
17 has the primary functions of diagnosis and treatment of
18 patients under the age of 18 having psychiatric disorders in
19 order to restore such patients to an optimal level of
20 functioning.

21 (19)~~(17)~~ "Licensed facility" means a hospital or
22 ambulatory surgical center licensed in accordance with this
23 chapter.

24 (20)~~(18)~~ "Lifesafety" means the control and prevention
25 of fire and other life-threatening conditions on a premises
26 for the purpose of preserving human life.

27 (21) "Managing employee" means the administrator or
28 other similarly titled individual who is responsible for the
29 daily operation of the facility.

30 (22)~~(19)~~ "Medical staff" means physicians licensed
31 under chapter 458 or chapter 459 with privileges in a licensed

1 facility, as well as other licensed health care practitioners
2 with clinical privileges as approved by a licensed facility's
3 governing board.

4 (23)~~(20)~~ "Medically necessary transfer" means a
5 transfer made necessary because the patient is in immediate
6 need of treatment for an emergency medical condition for which
7 the facility lacks service capability or is at service
8 capacity.

9 (24)~~(21)~~ "Person" means any individual, partnership,
10 corporation, association, or governmental unit.

11 (25)~~(22)~~ "Premises" means those buildings, beds, and
12 equipment located at the address of the licensed facility and
13 all other buildings, beds, and equipment for the provision of
14 hospital or ambulatory surgical care located in such
15 reasonable proximity to the address of the licensed facility
16 as to appear to the public to be under the dominion and
17 control of the licensee.

18 (26)~~(23)~~ "Private review agent" means any person or
19 entity which performs utilization review services for
20 third-party payors on a contractual basis for outpatient or
21 inpatient services. However, the term shall not include
22 full-time employees, personnel, or staff of health insurers,
23 health maintenance organizations, or hospitals, or wholly
24 owned subsidiaries thereof or affiliates under common
25 ownership, when performing utilization review for their
26 respective hospitals, health maintenance organizations, or
27 insureds of the same insurance group. For this purpose,
28 health insurers, health maintenance organizations, and
29 hospitals, or wholly owned subsidiaries thereof or affiliates
30 under common ownership, include such entities engaged as
31 administrators of self-insurance as defined in s. 624.031.

1 ~~(27)~~(24) "Service capability" means all services
2 offered by the facility where identification of services
3 offered is evidenced by the appearance of the service in a
4 patient's medical record or itemized bill.

5 ~~(28)~~(25) "At service capacity" means the temporary
6 inability of a hospital to provide a service which is within
7 the service capability of the hospital, due to maximum use of
8 the service at the time of the request for the service.

9 ~~(29)~~(26) "Specialty bed" means a bed, other than a
10 general bed, designated on the face of the hospital license
11 for a dedicated use.

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

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

18 (b) A restricted range of services appropriate to the
19 diagnosis, care, and treatment of patients with specific
20 categories of medical or psychiatric illnesses or disorders;
21 or

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

24 ~~(31)~~(28) "Stabilized" means, with respect to an
25 emergency medical condition, that no material deterioration of
26 the condition is likely, within reasonable medical
27 probability, to result from the transfer of the patient from a
28 hospital.

29 ~~(32)~~(29) "Utilization review" means a system for
30 reviewing the medical necessity or appropriateness in the
31

1 allocation of health care resources of hospital services given
2 or proposed to be given to a patient or group of patients.

3 ~~(33)(30)~~ "Utilization review plan" means a description
4 of the policies and procedures governing utilization review
5 activities performed by a private review agent.

6 ~~(34)(31)~~ "Validation inspection" means an inspection
7 of the premises of a licensed facility by the agency to assess
8 whether a review by an accrediting organization has adequately
9 evaluated the licensed facility according to minimum state
10 standards.

11 Section 34. Section 395.0055, Florida Statutes, is
12 created to read:

13 395.0055 Background screening.--Each applicant for
14 licensure must comply with the following requirements:

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

20 (2) The agency may require background screening for a
21 member of the board of directors of the licensee, or an
22 officer or an individual owning 5 percent or more of the
23 licensee, if the agency has probable cause to believe that
24 such individual has been convicted of an offense prohibited
25 under the level 2 standards for screening set forth in chapter
26 435.

27 (3) 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 licensure requirements of this state is acceptable
31 in fulfillment of subsection (1).

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

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

31

1 (6) 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.

7 (7) This section does not apply to a director of a
8 not-for-profit corporation or organization if the director
9 serves solely in a voluntary capacity for the corporation or
10 organization, does not regularly take part in the day-to-day
11 operational decisions of the corporation or organization,
12 receives no remuneration for his or her services on the
13 corporation or organization's board of directors, and has no
14 financial interest and has no family members with a financial
15 interest in the corporation or organization, provided that the
16 director and the not-for-profit corporation or organization
17 include in the application a statement affirming that the
18 director's relationship to the corporation satisfies the
19 requirements of this subsection.

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

27 (9) The agency may deny or revoke licensure if the
28 applicant:

29 (a) Has falsely represented a material fact in the
30 application required by subsection (5) or subsection (6), or
31

1 has omitted any material fact from the application required by
2 subsection (5) or subsection (6); or

3 (b) Has had prior Medicaid or Medicare action taken
4 against the applicant as set forth in subsection (5).

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

7 Section 35. Present subsections (4), (5), (6), (7),
8 (8), and (9) of section 395.0199, Florida Statutes, are
9 renumbered as subsections (5), (6), (7), (8), (9), and (10),
10 respectively, and a new subsection (4) is added to that
11 section, to read:

12 395.0199 Private utilization review.--

13 (4) Each applicant for registration must comply with
14 the 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 operation of the
20 entity. The applicant must comply with the procedures for
21 level 2 background screening as set forth in chapter 435, as
22 well as the 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 registration 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 registration 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 control

31

1 interests under the Medicaid or Medicare programs shall be
2 accepted in lieu of this submission.

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

21 (g) A registration may not be granted to an applicant
22 if the applicant or managing employee has been found guilty
23 of, 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 the registration if
29 any 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 program as set forth in
5 paragraph (e).

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

8 Section 36. Paragraph (b) of subsection (1) of section
9 400.051, Florida Statutes, is amended to read:

10 400.051 Homes or institutions exempt from the
11 provisions of this part.--

12 (1) The following shall be exempt from the provisions
13 of this part:

14 (b) Any hospital, as defined in s. 395.002(12)~~s.~~
15 ~~395.002(10)~~, that is licensed under chapter 395.

16 Section 37. Paragraph (a) of subsection (2) of section
17 400.071, Florida Statutes, is amended, present subsections
18 (4), (5), (6), (7), and (8) of that section are redesignated
19 as subsections (5), (6), (7), (8), and (9), respectively, and
20 a new subsection (4) is added to that section, to read:

21 400.071 Application for license.--

22 (2) The application shall be under oath and shall
23 contain the following:

24 (a) The name, address, and social security number of
25 the applicant if an individual; if the applicant is a firm,
26 partnership, or association, its name, address, and employer
27 identification number (EIN), and the name and address of every
28 member; if the applicant is a corporation, its name, address,
29 and employer identification number (EIN), and the name and
30 address of its director and officers and of each person having
31

1 at least a 5-percent ~~10-percent~~ interest in the corporation;
2 and the name by which the facility is to be known.

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 facility
10 administrator, or similarly titled individual who is
11 responsible for the day-to-day operation of the licensed
12 facility, and the facility financial officer, or similarly
13 titled individual who is responsible for the financial
14 operation of the licensed facility.

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 has probable cause to believe that such individual
19 has been convicted of an offense prohibited under the level 2
20 standards for screening set forth in chapter 435.

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

31

1 fulfillment of the Department of Law Enforcement and Federal
2 Bureau of 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, 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 license
12 may be granted to the applicant upon the agency's receipt of a
13 report of the results of the Federal Bureau of Investigation
14 background screening for each individual required by this
15 section to undergo background screening which confirms that
16 all standards have been met, or upon the granting of a
17 disqualification exemption by the agency as set forth in
18 chapter 435. Any other person who is required to undergo
19 level 2 background screening may serve in his or her capacity
20 pending the agency's receipt of the report from the Federal
21 Bureau of Investigation; however, the person may not continue
22 to serve if the report indicates any violation of background
23 screening standards and a disqualification exemption has not
24 been requested of and granted by the agency as set forth in
25 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 disclosure of ownership and control interest requirements of
31

1 the Medicaid or Medicare programs shall be accepted in lieu of
2 this submission.

3 (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 shall 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) An application for license renewal must contain
22 the information required under paragraphs (e) and (f).

23 Section 38. Section 400.411, Florida Statutes, is
24 amended to read:

25 400.411 Initial application for license; provisional
26 license.--

27 (1) Application for a license shall be made to the
28 agency on forms furnished by it and shall be accompanied by
29 the appropriate license fee. The application shall contain
30 sufficient information, as required by rules of the
31

1 department, to establish that the applicant can provide
2 adequate care.

3 (2) The applicant may be an individual owner, a
4 corporation, a partnership, a firm, an association, or a
5 governmental entity.

6 (3)~~(2)~~ The application must ~~shall~~ be signed by the
7 applicant under oath and must ~~shall~~ contain the following:

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

11 ~~1.~~ If the applicant is a firm, partnership, or
12 association, the application shall contain the name, address,
13 date of birth, and social security number of every member
14 thereof.

15 ~~2.~~ If the applicant is a corporation, the application
16 shall contain the corporation's ~~its~~ name and address; ~~the~~
17 name, address, date of birth, and social security number of
18 each of its directors and officers; ~~and the name and address~~
19 of each person having at least a 5-percent ownership
20 ~~10-percent~~ interest in the corporation.

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

28 (c) ~~Information that provides a source to establish~~
29 ~~the suitable character, financial stability, and competency of~~
30 ~~the applicant and of each person specified in the application~~
31 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~

1 ~~least a 10 percent interest in the firm, partnership,~~
2 ~~association, or corporation and, if applicable, of the~~
3 ~~administrator, including~~ The name and address of any long-term
4 care facility with which the applicant, or administrator, or
5 financial officer has been affiliated through ownership or
6 employment within 5 years of the date of this license ~~the~~
7 application ~~for a license~~; and a signed affidavit disclosing
8 any financial or ownership interest that the applicant, or any
9 person listed in paragraph (a) principal, partner, or
10 ~~shareholder thereof~~, holds or has held within the last 5 years
11 in any ~~other~~ facility licensed under this part, or in any
12 other entity licensed by this ~~the~~ state or another state to
13 provide health or residential care, which facility or entity
14 closed or ceased to operate as a result of financial problems.

15 (d) A description and explanation of any exclusions,
16 permanent suspensions, or terminations of the applicant from
17 the Medicare or Medicaid programs. Proof of compliance with
18 disclosure of ownership and control interest requirements of
19 the Medicaid or Medicare programs shall be accepted in lieu of
20 this submission.

21 (e)(d) The names and addresses of other persons of
22 whom the agency may inquire as to the character, and
23 reputation, and financial responsibility of the owner
24 ~~applicant~~ and, if different from the applicant, applicable, of
25 the administrator and financial officer.

26 ~~(e) The names and addresses of other persons of whom~~
27 ~~the agency may inquire as to the financial responsibility of~~
28 ~~the applicant.~~

29 (f) Identification of all other homes or facilities,
30 including the addresses and the license or licenses under
31 which they operate, if applicable, which are currently

1 operated by the applicant or administrator and which provide
2 housing, meals, and personal services to residents adults.

3 ~~(g) Such other reasonable information as may be~~
4 ~~required by the agency to evaluate the ability of the~~
5 ~~applicant to meet the responsibilities entailed under this~~
6 ~~part.~~

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

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

14 ~~(4)(3)~~ The applicant shall furnish satisfactory proof
15 of financial ability to operate and conduct the facility in
16 accordance with the requirements of this part. ~~An applicant~~
17 ~~applying for an initial license shall submit a balance sheet~~
18 ~~setting forth the assets and liabilities of the owner and a~~
19 ~~statement projecting revenues, expenses, taxes, extraordinary~~
20 ~~items, and other credits or charges for the first 12 months of~~
21 ~~operation of the facility.~~

22 ~~(5)(4)~~ If the applicant is a continuing care facility
23 certified under ~~offers continuing care agreements, as defined~~
24 ~~in chapter 651, a copy of the facility's proof shall be~~
25 ~~furnished that the applicant has obtained a certificate of~~
26 ~~authority must be provided as required for operation under~~
27 ~~that chapter.~~

28 ~~(6)(5)~~ The applicant shall provide proof of liability
29 insurance as defined in s. 624.605.

30 ~~(7)(6)~~ If the applicant is a community residential
31 home, the applicant must provide proof that it has met the

1 requirements specified in chapter 419 ~~shall apply to community~~
2 ~~residential homes zoned single-family or multifamily.~~

3 (8)~~(7)~~ The applicant must provide the agency with
4 proof of legal right to occupy the property. ~~This proof may~~
5 ~~include, but is not limited to, copies of recorded warranty~~
6 ~~deeds, or copies of lease or rental agreements, contracts for~~
7 ~~deeds, quitclaim deeds, or other such documentation.~~

8 (9)~~(8)~~ The applicant must furnish proof that the
9 facility has received a satisfactory firesafety inspection.
10 The local ~~fire marshal or other~~ authority having jurisdiction
11 or the State Fire Marshal must conduct the inspection within
12 30 days after ~~the~~ written request by the applicant. ~~If an~~
13 ~~authority having jurisdiction does not have a certified~~
14 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
15 ~~inspection.~~

16 (10) The applicant must furnish proof of compliance
17 with level 2 background screening as required under s.
18 400.4174.

19 (11)~~(9)~~ A provisional license may be issued to an
20 applicant making initial application for licensure or making
21 application for a change of ownership. A provisional license
22 shall be limited in duration to a specific period of time not
23 to exceed 6 months, as determined by the agency.

24 (12)~~(10)~~ A ~~No~~ county or municipality may not ~~shall~~
25 issue an occupational license that ~~which~~ is being obtained for
26 the purpose of operating a facility regulated under this part
27 without first ascertaining that the applicant has been
28 licensed to operate such facility at the specified location or
29 locations by the agency. The agency shall furnish to local
30 agencies responsible for issuing occupational licenses

31

1 sufficient instruction for making such ~~the above required~~
2 determinations.

3 (13) The department may by rule establish application
4 procedures, identify forms, and specify documentation
5 necessary to administer this section.

6 Section 39. Section 400.414, Florida Statutes, is
7 amended to read:

8 400.414 Denial, revocation, or suspension of license;
9 imposition of administrative fine; grounds.--

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

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

19 (a) An intentional or negligent act seriously
20 affecting the health, safety, or welfare of a resident of the
21 facility.

22 (b) ~~The determination by the agency that the facility~~
23 ~~owner or administrator is not of suitable character or~~
24 ~~competency, or that the owner lacks the financial ability, to~~
25 ~~provide continuing adequate care to residents, pursuant to the~~
26 ~~information obtained through s. 400.411, s. 400.417, or s.~~
27 ~~400.434.~~

28 (c) Misappropriation or conversion of the property of
29 a resident of the facility.

30 (d) Failure to follow the criteria and procedures
31 provided under part I of chapter 394 relating to the

1 transportation, voluntary admission, and involuntary
2 examination of a facility resident.

3 (e) Five or more ~~repeated or recurring identical or~~
4 ~~similar~~ class III violations that are similar or identical to
5 violations of this part which were identified by the agency
6 during the previous survey last biennial inspection,
7 monitoring visit, or complaint investigation and which, in the
8 aggregate, affect the health, safety, or welfare of the
9 facility residents.

10 (f) A determination that a person subject to level 2
11 background screening under s. 400.4174(1) does not meet the
12 screening standards of s. 435.04 or that the facility is
13 retaining an employee subject to level 1 background screening
14 standards under s. 400.4174(2) who does not meet the screening
15 standards of s. 435.03 and for whom exemptions from
16 disqualification have not been provided by the agency.

17 (g)(f) A confirmed report of adult abuse, neglect, or
18 exploitation, as defined in s. 415.102, which has been upheld
19 following a chapter 120 hearing or a waiver of such
20 proceedings where the perpetrator is an employee, volunteer,
21 administrator, or owner, or otherwise has access to the
22 residents of a facility, and the owner or administrator has
23 not taken action to remove the perpetrator. Exemptions ~~from~~
24 ~~disqualification~~ may be granted as set forth in s. 435.07. ~~No~~
25 ~~administrative action may be taken against the facility if the~~
26 ~~perpetrator is granted an exemption.~~

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

28 (i)(h) Failure of the license applicant, the licensee
29 during relicensure, or ~~failure of~~ a licensee that holds a a
30 provisional ~~an initial or change of ownership~~ license, to meet
31

1 minimum license ~~standards or the~~ requirements of ~~rules adopted~~
2 under this part.

3 (j)(i) A fraudulent statement or omission of any
4 material fact on an application for a license or any other
5 document required by the agency, including the submission of a
6 license application that conceals the fact that any board
7 member, officer, or person owning 5 percent or more of the
8 facility may not meet the background screening requirements of
9 s. 400.4174, or that the applicant has been excluded,
10 permanently suspended, or terminated from the Medicaid or
11 Medicare programs that is signed and notarized.

12 (k)(j) An intentional or negligent life-threatening
13 act in violation of the uniform firesafety standards for
14 assisted living facilities or other firesafety standards
15 ~~established by the State Fire Marshal,~~that threatens the
16 health, safety, or welfare of a resident of a facility, as
17 communicated to the agency by the ~~State Fire Marshal,~~ a local
18 ~~fire marshal, or other~~ authority having jurisdiction or the
19 State Fire Marshal.

20 (l) Exclusion, permanent suspension, or termination
21 from the Medicare or Medicaid programs.

22

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

25 (2)(4) Upon notification by the ~~State Fire Marshal,~~
26 ~~local fire marshal, or other~~ authority having jurisdiction or
27 by the State Fire Marshal, the agency may deny or revoke the
28 license of an assisted living a facility that fails to correct
29 cited fire code violations ~~issued by the State Fire Marshal, a~~
30 ~~local fire marshal, or other authority having jurisdiction,~~

31

1 that affect or threaten the health, safety, or welfare of a
2 resident of a facility.

3 (3)~~(5)~~ The agency may deny a license to an applicant
4 who owns or owed 25 percent or more of, or operates or
5 operated, an assisted living ~~a~~ facility which, during the 5
6 years prior to the application for a license, has had a
7 license denied, suspended, or revoked ~~pursuant to subsection~~
8 ~~(2)~~, or, during the 2 years prior to the application for a
9 license, has had a moratorium imposed on admissions, has had
10 an injunctive proceeding initiated against it, has had a
11 receiver appointed, was closed due to financial inability to
12 operate, or has an outstanding fine assessed under this part.

13 (4)~~(6)~~ An action taken by the agency to suspend, deny,
14 or revoke a facility's license under this part, in which the
15 agency claims that the facility owner or an employee of the
16 facility has threatened the health, safety, or welfare of a
17 resident of the facility, shall, upon receipt of the
18 facility's request for a hearing, be heard by the Division of
19 Administrative Hearings of the Department of Management
20 Services within 120 days after the request for a hearing,
21 unless that time period is waived by both parties. The
22 administrative law judge must render a decision within 30 days
23 after the hearing.

24 (5)~~(7)~~ The agency shall provide to the Division of
25 Hotels and Restaurants of the Department of Business and
26 Professional Regulation, on a monthly basis, a list of those
27 assisted living facilities that ~~which~~ have had their licenses
28 denied, suspended, or revoked or that ~~which~~ are involved in an
29 appellate proceeding pursuant to s. 120.60 related to the
30 denial, suspension, or revocation of a license.

31

1 Section 40. Subsection (1) of section 400.417, Florida
2 Statutes, is amended to read:

3 400.417 Expiration of license; renewal; conditional
4 license.--

5 (1) Biennial licenses ~~issued for the operation of a~~
6 ~~facility~~, unless sooner suspended or revoked, shall expire
7 ~~automatically~~ 2 years from the date of issuance. The agency
8 shall notify the facility by certified mail at least 120 days
9 prior to ~~the expiration of the license~~ that a renewal license
10 ~~relicensure~~ is necessary to continue operation. Ninety days
11 prior to the expiration date, an application for renewal shall
12 be submitted to the agency. A license shall be renewed upon
13 the filing of an application on forms furnished by the agency
14 if the applicant has first met the requirements established
15 under this part and all rules adopted ~~promulgated~~ under this
16 part. The failure to file a timely renewal application shall
17 result in a late fee charged to the facility in an amount
18 equal to 50 percent of the current ~~fee in effect on the last~~
19 ~~preceding regular renewal date~~. Late fees shall be deposited
20 into the Health Care Trust Fund as provided in s. 400.418.
21 The facility shall file with the application satisfactory
22 proof of ability to operate and conduct the facility in
23 accordance with the requirements of this part. An applicant
24 for renewal of a license must furnish proof that the facility
25 has received a satisfactory firesafety inspection, conducted
26 by the local ~~fire marshal or other~~ authority having
27 jurisdiction or the State Fire Marshal, within the preceding
28 12 months and an affidavit of compliance with the background
29 screening requirements of s. 400.4174. An applicant for
30 renewal of a license who has complied ~~on the initial license~~
31 ~~application~~ with the provisions of s. 400.411 with respect to

1 proof of financial ability to operate shall not be required to
2 provide further proof of financial ability on renewal
3 ~~applications~~ unless the facility or any other facility owned
4 or operated in whole or in part by the same person or business
5 entity has demonstrated financial instability as evidenced by
6 bad checks, delinquent accounts, or nonpayment of withholding
7 taxes, utility expenses, or other essential services or unless
8 the agency suspects that the facility is not financially
9 stable as a result of the annual survey or complaints from the
10 public or a report from the State Long-Term Care Ombudsman
11 Council established under s. 400.0067. Each facility shall
12 report to the agency any adverse court action concerning the
13 facility's financial viability, within 7 days after its
14 occurrence. The agency shall have access to books, records,
15 and any other financial documents maintained by the facility
16 to the extent necessary to determine the facility's financial
17 stability ~~carry out the purpose of this section~~. The agency
18 may not renew a license for the operation of a facility ~~shall~~
19 ~~not be renewed~~ if the licensee has any outstanding fines
20 assessed pursuant to this part which are in final order
21 status.

22 Section 41. Section 400.4174, Florida Statutes, is
23 amended to read:

24 400.4174 Background screening; exemptions; reports of
25 abuse in facilities.--

26 (1)(a) Level 2 background screening must be conducted
27 on each of the following persons, who shall be considered
28 employees for the purposes of conducting screening under
29 chapter 435:

30 1. The facility owner if an individual; the
31 administrator; and the financial officer.

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

21 (b) Proof of compliance with level 2 screening
22 standards which has been submitted within the previous 5 years
23 to meet any facility or professional licensure requirements of
24 the agency or the Department of Health satisfies the
25 requirements of this subsection, provided that such proof is
26 accompanied, under penalty of perjury, by an affidavit of
27 compliance with the provisions of chapter 435. Proof of
28 compliance with the background screening requirements of the
29 Department of Insurance for applicants for a certificate of
30 authority to operate a continuing care retirement community
31 under chapter 651, submitted within the last 5 years,

1 satisfies the Department of Law Enforcement and Federal Bureau
2 of Investigation portions of a level 2 background check.

3 (c) The agency may grant a provisional license to a
4 facility applying for an initial license when each individual
5 required by this subsection to undergo screening has completed
6 the abuse registry and Department of Law Enforcement
7 background checks, but has not yet received results from the
8 Federal Bureau of Investigation, or when a request for an
9 exemption from disqualification has been submitted to the
10 agency pursuant to s. 435.07, but a response has not been
11 issued.

12 (2) The owner or administrator of an assisted living
13 facility must conduct level 1 background screening, as set
14 forth in chapter 435, on all employees hired on or after
15 October 1, 1998, who perform personal services as defined in
16 s. 400.402(16). The agency may exempt an individual from
17 employment disqualification as set forth in chapter 435. Such
18 persons shall be considered as having met this requirement if:

19 (a) Proof of compliance with level 1 screening
20 requirements obtained to meet any professional license
21 requirements in this state is provided and accompanied, under
22 penalty of perjury, by a copy of the person's current
23 professional license and an affidavit of current compliance
24 with the background screening requirements.

25 (b) The person required to be screened has been
26 continuously employed in the same type of occupation for which
27 the person is seeking employment without a breach in service
28 which exceeds 180 days, and proof of compliance with the level
29 1 screening requirement which is no more than 2 years old is
30 provided. Proof of compliance shall be provided directly from
31 one employer or contractor to another, and not from the person

1 screened. Upon request, a copy of screening results shall be
2 provided by the employer retaining documentation of the
3 screening to the person screened.

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

10 (3) When an employee, volunteer, administrator, or
11 owner of a facility is the subject of ~~has~~ a confirmed report
12 of adult abuse, neglect, or exploitation, as defined in s.
13 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~
14 and the protective investigator knows that the individual is
15 an employee, volunteer, administrator, or owner of a facility,
16 the agency shall be notified of the confirmed report.

17 Section 42. Section 400.4176, Florida Statutes, is
18 amended to read:

19 400.4176 Notice of change of administrator.--If,
20 during the period for which a license is issued, the owner
21 changes administrators, the owner must notify the agency of
22 the change within 45 days ~~thereof~~ and ~~must~~ provide
23 documentation that the new administrator has completed the
24 applicable core educational requirements under s. 400.452.
25 Background screening shall be completed on any new
26 administrator ~~to establish that the individual is of suitable~~
27 ~~character~~ as specified in s. 400.4174 ~~ss. 400.411(2)(c) and~~
28 ~~400.456.~~

29 Section 43. Section 400.461, Florida Statutes, is
30 amended to read:

31 400.461 Short title; purpose.--

1 (1) This part, consisting of ss. 400.461-400.518 ~~ss.~~
2 ~~400.461-400.515~~, may be cited as the "Home Health Services
3 Act."

4 (2) The purpose of this part is to provide for the
5 licensure of every home health agency and to provide for the
6 development, establishment, and enforcement of basic standards
7 that will ensure the safe and adequate care of persons
8 receiving health services in their own homes.

9 Section 44. Section 400.462, Florida Statutes, is
10 amended to read:

11 400.462 Definitions.--As used in this part, the term:

12 (1) "Administrator" means a direct employee to whom
13 the governing body has delegated the responsibility for the
14 day-to-day administration of a home health agency. The
15 administrator must be a licensed physician, physician
16 assistant, or registered nurse licensed to practice in this
17 state, or an individual who has at least 1 year of supervisory
18 or administrative experience in home health care or in a
19 facility licensed under part II, part III, or part IV of
20 chapter 400 or chapter 395. An employee of the governing body
21 may administer a maximum of five licensed home health agencies
22 operated by a related business entity and located within one
23 agency service district or within an immediately contiguous
24 county. An administrator shall designate, in writing for each
25 licensed entity, a qualified alternate administrator to serve
26 during the administrator's absence. If the home health agency
27 is licensed under this chapter and is part of a retirement
28 community that provides multiple levels of care, an employee
29 of the retirement community may administer the home health
30 agency and up to a maximum of four entities licensed under

1 this chapter which are located on the same campus and owned,
2 operated, or managed by the same corporate entity.

3 (2) "Agency" means the Agency for Health Care
4 Administration.

5 (3)(1) "Certified nursing assistant" means any person
6 who has been issued a certificate under ~~after fulfilling the~~
7 ~~requirements of s. 400.211. A licensed home health agency or a~~
8 ~~licensed nurse registry shall validate that any certified~~
9 ~~nursing assistant is adequately trained to perform the tasks~~
10 ~~of a home health aide in the home setting.~~

11 (4) "Client" means an elderly, handicapped, or
12 convalescent individual who receives personal care services,
13 companion services, or homemaker services in the individual's
14 home or place of residence.

15 (5)(2) "Companion" ~~or "sitter"~~ means a person who
16 cares for an elderly, handicapped, or convalescent individual
17 and accompanies such individual on trips and outings and may
18 prepare and serve meals to such individual. A companion may
19 ~~not provide hands-on personal care to the client.~~

20 (6)(3) "Department" means the Department of Children
21 ~~and Family Health and Rehabilitative Services.~~

22 (7) "Director of nursing" means a registered nurse,
23 and direct employee of the home health agency, who is a
24 graduate of an approved school of nursing and is licensed in
25 this state; who has at least 1 year of supervisory experience
26 as a registered nurse and experience in a licensed home health
27 agency, a facility licensed under chapter 395, or a facility
28 licensed under part II, part III, or part VI of chapter 400;
29 and who is responsible for overseeing the professional nursing
30 and home health aid delivery of services of the agency. An
31 employee may be the director of nursing of a maximum of five

1 licensed home health agencies operated by a related business
2 entity. If a home health agency is licensed under this chapter
3 and is part of a retirement community that provides multiple
4 levels of care, an employee of the retirement community may
5 serve as the director of nursing for the home health agency
6 and up to four additional entities licensed under chapter 400
7 if the entities are located on the same campus and are owned,
8 operated, or managed by the same corporate entity. A director
9 of nursing shall designate, in writing for each home health
10 agency, a qualified alternate registered nurse to serve during
11 the absence of the director of nursing.

12 (8)(4) "Home health agency" means an organization that
13 provides home health services and staffing services ~~for health~~
14 ~~care facilities.~~

15 (9)(5) "Home health agency personnel" means persons
16 who are employed by or under contract with a home health
17 agency and enter the home or place of residence of patients at
18 any time in the course of their employment or contract.

19 (10)(6) "Home health services" means health and
20 medical services and medical supplies furnished by an
21 organization to an individual ~~by home health agency personnel~~
22 ~~or by others under arrangements with the agency, on a visiting~~
23 ~~basis,~~ in the individual's home or place of residence. The
24 term includes organizations that provide one or more of, ~~but~~
25 ~~is not limited to,~~ the following:

- 26 (a) Nursing care.
27 (b) Physical, occupational, respiratory, or speech
28 therapy.
29 (c) Home health aide services.
30 (d) Dietetics and nutrition practice and nutrition
31 counseling ~~Nutritional guidance.~~

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

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

9 (12)~~(7)~~ "Homemaker" means a person who performs
10 household chores that include housekeeping, meal planning and
11 preparation, shopping assistance, and routine household
12 activities for an elderly, handicapped, or convalescent
13 individual. A homemaker may not provide hands-on personal care
14 to a client.

15 (13) "Home infusion therapy provider" means an
16 organization that employs, contracts with, or refers a
17 licensed professional who has received advanced training and
18 experience in intravenous infusion therapy and who administers
19 infusion therapy to a patient in the patient's home or place
20 of residence.

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

24 (15)~~(8)~~ "Nurse registry" means any person that
25 procures, offers, promises, or attempts to secure
26 health-care-related contracts for registered nurses, licensed
27 practical nurses, certified nursing assistants, home health
28 aides ~~sitters~~, companions, or homemakers, who are compensated
29 by fees as independent contractors, including, but not limited
30 to, contracts for the provision of services to patients and
31 contracts to provide private duty or staffing services to

1 health care facilities licensed under chapter 395 or this
2 chapter or to other business entities.

3 (16) "Organization" means a corporation, government or
4 governmental subdivision or agency, partnership or
5 association, two or more persons having a joint or common
6 interest, or any other legal or commercial entity. The term
7 does not include an entity that provides services using only
8 volunteers.

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

11 (18) "Personal care" includes, but is not limited to,
12 assisting a patient in the activities of daily living, such as
13 dressing, grooming, bathing, eating, or personal hygiene;
14 assisting in physical transfer and ambulation; and supervising
15 the self-administration of medications.

16 (19) "Physician" means a person licensed under chapter
17 458, chapter 459, chapter 460, or chapter 461.

18 (20)~~(10)~~ "Screening" means the assessment of the
19 background of home health agency personnel, nurse registry
20 personnel, and persons registered under s. 400.509 and
21 includes employment history checks, records checks of the
22 department's central abuse hotline under chapter 415 relating
23 to vulnerable adults, and statewide criminal records
24 correspondence checks through the Department of Law
25 Enforcement.

26 (21) "Skilled care" means nursing services or
27 therapeutic services delivered by a health care professional
28 who is licensed under chapter 464; parts I, III, or V of
29 chapter 468; or chapter 486, and who is employed by or under
30 contract with a licensed home health agency or is referred by
31 a licensed nurse registry.

1 ~~(11)~~ (22) "Staffing services" means services provided
2 to a ~~health care facility~~ or other business entity on a
3 temporary basis by licensed health care personnel, including
4 certified nursing assistants and home health aides who are
5 employed by or work under the auspices of a licensed home
6 health agency or who are registered with a licensed nurse
7 registry.

8 Section 45. Section 400.464, Florida Statutes, is
9 amended to read:

10 400.464 Home health agencies to be licensed;
11 expiration of license; exemptions; unlawful acts; penalties.--

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

18 (2) If the licensed home health agency operates
19 related offices, each related office outside the county where
20 the main office is located must be separately licensed. The
21 counties where the related offices are operating must be
22 specified on the license in the main office.

23 (3) An entity that receives a certificate-of-need
24 exemption under s. 408.0366 may request one home health agency
25 license to provide Medicare and non-Medicare home health
26 services to residents of the facility and non-Medicare home
27 health services to persons in one or more counties within the
28 agency service district where the main office of the home
29 health agency is located.

30 ~~(3) The furnishing of only home dialysis services,~~
31 ~~supplies, or equipment, or personal care services as provided~~

1 ~~by a community care for the elderly lead agency under s.~~
2 ~~430.205, or personal care services provided through a~~
3 ~~community care for disabled adults program under s. 410.604,~~
4 ~~is exempt from this part. The personal care services~~
5 ~~exemptions apply only to community care for the elderly lead~~
6 ~~agencies and community care for disabled adults programs that~~
7 ~~directly provide only personal care services to their clients~~
8 ~~and do not provide other home health services.~~

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

13 ~~(5)(a) It is unlawful for any person to offer or~~
14 ~~advertise home health services to the public unless he or she~~
15 ~~has a valid license under this part. It is unlawful for any~~
16 ~~holder of a license issued under this part to advertise or~~
17 ~~indicate to the public that it holds a home health agency~~
18 ~~license other than the one it has been issued.~~

19 ~~(b) A person who violates paragraph (a) is subject to~~
20 ~~an injunctive proceeding under s. 400.515. A violation of~~
21 ~~paragraph (a) is a deceptive and unfair trade practice and~~
22 ~~constitutes a violation of the Florida Deceptive and Unfair~~
23 ~~Trade Practices Act.~~

24 ~~(c) A person who violates paragraph (a) commits a~~
25 ~~misdemeanor of the second degree, punishable as provided in s.~~
26 ~~775.082 or s. 775.083. Any person who commits a second or~~
27 ~~subsequent violation commits a misdemeanor of the first~~
28 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

29
30 ~~Each day of continuing violation constitutes a separate~~
31 ~~offense.~~

1 ~~(4)(6)~~ Any home infusion therapy provider shall be
2 licensed as a home health agency or nurse registry. Any home
3 infusion therapy provider currently authorized to receive
4 Medicare reimbursement under a DME - Part B Provider number
5 for the provision of infusion therapy shall be licensed as a
6 noncertified home health agency. Such a provider shall
7 continue to receive that specified Medicare reimbursement
8 without being certified so long as the reimbursement is
9 limited to those items authorized pursuant to the DME - Part B
10 Provider Agreement and the home health agency is licensed in
11 compliance with the other provisions of this part.

12 (5)(a) An organization may not provide, offer, or
13 advertise home health services to the public unless the
14 organization has a valid license or is specifically exempt
15 under this part. An organization that offers or advertises to
16 the public any service for which licensure or registration is
17 required under this part must include in the advertisement the
18 license number or registration number issued to the
19 organization by the agency. The agency shall assess a fine of
20 not less than \$100 to any licensee or registrant who fails to
21 include the license or registration number when submitting an
22 advertisement for publication, broadcast, or printing. The
23 holder of a license issued under this part may not advertise
24 or indicate to the public that it holds a home health agency
25 license or a nurse registry license other than the one it has
26 been issued.

27 (b) A person who violates the provisions of paragraph
28 (a) is subject to an injunctive proceeding under s. 400.515. A
29 violation of paragraph (a) is a deceptive and unfair trade
30 practice and constitutes a violation of the Florida Unfair and
31 Deceptive Trade Practices Act.

1 (c) A person who violates the provisions of paragraph
2 (a) commits a misdemeanor of the second degree, punishable as
3 provided in s. 775.082 or s. 775.083. Any person who commits a
4 second or subsequent violation commits a misdemeanor of the
5 first degree, punishable as provided in s. 775.082 or s.
6 775.083. Each day of continuing violation constitutes a
7 separate offense.

8 (6) The following are exempt from the licensure
9 requirements of this part:

10 (a) A home health agency operated by the Federal
11 Government.

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

14 1. Pursuant to s. 430.04(2)(f), services provided
15 through a program or contract of the Department of Elderly
16 Affairs and services provided through a program of community
17 care for disabled adults under s. 410.604. This exemption does
18 not entitle an individual to perform home health services
19 without the required professional license.

20 2. Any program offered through the Department of
21 Health, a community health center, or a rural health network
22 which furnishes home visits for the purpose of providing
23 environmental assessments, case management, health education,
24 personal care services, family planning, or follow-up
25 treatment or for the purpose of monitoring and tracking
26 disease.

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

29 (c) A health care professional, whether or not
30 incorporated, who is licensed under chapter 458, chapter 459,
31 chapter 464, chapter 467, parts I, III, V, or X of chapter

1 468, chapter 480, chapter 486, chapter 490, or chapter 491,
2 and who is acting alone within the scope of his or her
3 professional license to provide care to patients in their
4 homes.

5 (d) A home health aide, or certified nursing
6 assistant, who acts in his or her individual capacity within
7 the definitions and standards of his or her respective
8 occupation, and who provides hands-on care to patients in
9 their homes.

10 (e) Natural persons providing personal-care services
11 to individuals or families in their place of residence. This
12 exemption allows each natural person to serve no more than 12
13 individuals or families in any calendar year without a home
14 health agency license. A natural person who provides
15 personal-care services under this paragraph may not engage in
16 paid advertisement to the public as providing the services
17 covered under this exemption.

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

20 (g) The delivery of nursing home services, for which
21 the nursing home is licensed under part II of this chapter, to
22 serve its residents in its facility.

23 (h) The delivery of assisted living facility services,
24 for which the assisted living facility is licensed under part
25 III of this chapter, to serve its residents in its facility.

26 (i) The delivery of hospice services, for which the
27 hospice is licensed under part VI of this chapter, to serve
28 hospice patients admitted to its service.

29 (j) A hospital that provides services for which it is
30 licensed under chapter 395 and birth centers under chapter
31 383.

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

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

6 (m) Certified rehabilitation agencies and
7 comprehensive outpatient rehabilitation facilities that are
8 certified under Title 18 of the Social Security Act.

9 (n) The delivery of adult family-care home services,
10 for which the adult family-care home is licensed under part
11 VII of this chapter, to serve the residents in its facility.

12 Section 46. Section 400.471, Florida Statutes, is
13 amended to read:

14 400.471 Application for license; fee; provisional
15 license; temporary permit.--

16 (1) Application for an initial license or for renewal
17 of an existing license must be made under oath to the agency
18 ~~for Health Care Administration~~ on forms furnished by it and
19 must be accompanied by the appropriate license fee as provided
20 in subsection (8)~~subsection (7)~~. The agency must take final
21 action on an initial licensure application within 90 ~~60~~ days
22 after receipt of all required documentation.

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

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

29 (b) The number and discipline of professional staff to
30 be employed; and

31

1 (c) Proof of financial ability to operate. If the
2 applicant has applied for a certificate of need under ss.
3 408.0331-408.045 within the preceding 12 months, the applicant
4 may submit the proof submitted during the certificate-of-need
5 process along with an attestation that there has been no
6 substantial change in the facts and circumstances underlying
7 the original submission.

8 (3) An applicant for initial licensure must
9 demonstrate financial ability to operate by submitting a
10 balance sheet and income and expense statement for the first 2
11 years of operation which provide evidence of having sufficient
12 assets, credit, and projected revenues to cover liabilities
13 and expenses. The applicant shall have demonstrated financial
14 ability to operate if the applicant's assets, credit, and
15 projected revenues meet or exceed projected liabilities and
16 expenses. All documents required under this subsection must
17 be prepared in accordance with generally accepted accounting
18 principles and the financial statement must be signed by a
19 certified public accountant.

20 (4) Each applicant for licensure must comply with the
21 following requirements:

22 (a) Upon receipt of a completed, signed, and dated
23 application, the agency shall require background screening of
24 the applicant, in accordance with the level 2 standards for
25 screening set forth in chapter 435. As used in this
26 subsection, the term "applicant" means the administrator, or a
27 similarly titled person who is responsible for the day-to-day
28 operation of the licensed home health agency, and the
29 financial officer, or similarly titled individual who is
30 responsible for the financial operation of the licensed home
31 health agency.

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

7 (c) Proof of compliance with the level 2 background
8 screening requirements of chapter 435 which has been submitted
9 within the previous 5 years in compliance with any other
10 health care or assisted living licensure requirements of this
11 state is acceptable in fulfillment of paragraph (a). Proof of
12 compliance with background screening which has been submitted
13 within the previous 5 years to fulfill the requirements of the
14 Department of Insurance pursuant to chapter 651 as part of an
15 application for a certificate of authority to operate a
16 continuing care retirement community is acceptable in
17 fulfillment of the Department of Law Enforcement and Federal
18 Bureau of Investigation background check.

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

1 who is required to undergo level 2 background screening may
2 serve in his or her capacity pending the agency's receipt of
3 the report from the Federal Bureau of Investigation. However,
4 the person may not continue to serve if the report indicates
5 any violation of background screening standards and a
6 disqualification exemption has not been requested of and
7 granted by the agency 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 licensee or
11 potential licensee from the Medicare or Medicaid programs.
12 Proof of compliance with the requirements for disclosure of
13 ownership and control interest under the Medicaid or Medicare
14 programs may be 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, administrator, or financial officer has been
5 found guilty of, regardless of adjudication, or has entered a
6 plea of nolo contendere or guilty to, any offense prohibited
7 under the level 2 standards for screening set forth in chapter
8 435, unless an exemption from disqualification has been
9 granted by the agency as set forth in chapter 435.

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

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

16 2. Has been or is currently excluded, suspended,
17 terminated from, or has involuntarily withdrawn from
18 participation in this state's Medicaid program, or the
19 Medicaid program of any other state, or from participation in
20 the Medicare program or any other governmental or private
21 health care or health insurance program.

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

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

28 (5)(4) The home health agency must also obtain and
29 maintain the following liability insurance coverages, in an
30 Proof of liability insurance, as defined in s. 624.605, must
31 be submitted with the application. The Agency for Health Care

1 ~~Administration shall set the required amounts of liability~~
2 ~~insurance by rule, but the required amount of~~ must not be less
3 than \$250,000 per claim, and the home health agency must
4 submit proof of coverage with an initial application for
5 licensure and with each annual application for license
6 renewal:-

7 (a) Malpractice insurance, as defined in s.
8 624.605(1)(k); and

9 (b) Liability insurance, as defined in s.
10 624.605(1)(b).

11 ~~(6)(5)~~ Ninety Sixty days before the expiration date,
12 an application for renewal must be submitted to the agency ~~for~~
13 ~~Health Care Administration~~ under oath on forms furnished by
14 it, and a license must be renewed if the applicant has met the
15 requirements established under this part and applicable rules.
16 The home health agency must file with the application
17 satisfactory proof that it is in compliance with this part and
18 applicable rules. If there is evidence of financial
19 instability, the home health agency must submit satisfactory
20 proof of its financial ability to comply with the requirements
21 of this part.

22 ~~(7)(6)~~ When transferring the ownership of a home
23 health agency, the transferee must submit an application for a
24 license at least 60 days before the effective date of the
25 transfer. If the home health agency is being leased, a copy
26 of the lease agreement must be filed with the application. A
27 transfer to an immediate family member or member of the
28 transferor's household following a conviction, assessment, or
29 exclusion from Medicare or Medicaid may not be approved.

30 ~~(8)(7)~~ The license fee and annual renewal fee required
31 of a home health agency are ~~is~~ nonrefundable. The agency ~~for~~

1 ~~Health Care Administration~~ shall set the fees in an amount
2 that is sufficient to cover its costs in carrying out its
3 responsibilities under this part, but not to exceed \$1,000.
4 However, state, county, or municipal governments applying for
5 licenses under this part are exempt from the payment of
6 license fees. All fees collected under this part must be
7 deposited in the Health Care Trust Fund for the administration
8 of this part.

9 (9)~~(8)~~ The license must be displayed in a conspicuous
10 place in the administrative office of the home health agency
11 and is valid only while in the possession of the agency person
12 to which it is issued. The license may not be sold, assigned,
13 or otherwise transferred, voluntarily or involuntarily, and is
14 valid only for the home health agency and location for which
15 originally issued.

16 (10)~~(9)~~ A home health agency against whom a revocation
17 or suspension proceeding is pending at the time of license
18 renewal may be issued a provisional license effective until
19 final disposition by the agency ~~for Health Care Administration~~
20 of such proceedings. If judicial relief is sought from the
21 final disposition, the court that has jurisdiction may issue a
22 temporary permit for the duration of the judicial proceeding.

23 (11)~~(10)~~ The agency may ~~department shall~~ not issue a
24 license designated as certified to a home health agency that
25 ~~which~~ fails to receive a certificate of need under ~~the~~
26 provisions of ss. 408.031-408.045 and that fails to satisfy
27 the requirements of a Medicare-certification survey from the
28 agency.

29 (12) The agency may not issue a license to a home
30 health agency that has any unpaid fines assessed under this
31 part.

1 Section 47. Section 400.474, Florida Statutes, is
2 amended to read:

3 400.474 Denial, suspension, revocation of license;
4 injunction; grounds.--

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

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

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

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

15 (3) The agency may impose the following penalties for
16 operating without a license upon an owner who has in the past
17 operated, or who currently operates, a licensed home health
18 agency:

19 (a) If a home health agency that is found to be
20 operating without a license wishes to apply for a license, the
21 home health agency may submit an application only after the
22 agency has verified that the home health agency no longer
23 operates an unlicensed agency.

24 (b) Any person, partnership, or corporation that
25 violates paragraph (a) and that previously operated a licensed
26 home health agency or concurrently operates both a licensed
27 home health agency and an unlicensed home health agency
28 commits a felony of the third degree, punishable as provided
29 in s. 775.082, s. 775.083, or s. 775.084. If an owner has an
30 interest in more than one home health agency and fails to
31 license any one of those agencies, the agency shall issue a

1 cease and desist order for the activities of the unlicensed
2 home health agency and impose a moratorium on any or all of
3 the licensed agencies until the unlicensed home health agency
4 is licensed.

5 (c) If any home health agency meets the criteria in
6 paragraph (a) or paragraph (b) and that home health agency has
7 received any government reimbursement for services provided by
8 an unlicensed home health agency, the agency shall make a
9 fraud referral to the appropriate government reimbursement
10 program.

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

15 (a) A home health agency fails to provide at least one
16 of the services listed in s. 400.462(10) directly to patients
17 for a period of 6 consecutive months.

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

21 (c) An applicant or a licensed home health agency has
22 falsely represented a material fact in the application, or has
23 omitted from the application any material fact, including, but
24 not limited to, the fact that the controlling or ownership
25 interest is held by any officer, director, agent, manager,
26 employee, affiliated person, partner, or shareholder who may
27 not be eligible to participate.

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

30 1. Has been previously found by any licensing,
31 certifying, or professional standards board or agency to have

1 violated standards or conditions that relate to home
2 health-related licensure or certification, or to the quality
3 of home health-related services provided.

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

9 Section 48. Section 400.484, Florida Statutes, is
10 amended to read:

11 400.484 Right of inspection.--

12 (1) Any duly authorized officer or employee of the
13 agency for ~~Health Care Administration~~ may make such
14 inspections and investigations as are necessary in order to
15 determine the state of compliance with this part and with
16 applicable rules. The right of inspection extends to any
17 business that the agency for ~~Health Care Administration~~ has
18 reason to believe is being operated as a home health agency
19 without a license, but such inspection of any such business
20 may not be made without the permission of the owner or person
21 in charge unless a warrant is first obtained from a circuit
22 court. Any application for a license issued under this part or
23 for license renewal constitutes permission for an appropriate
24 inspection to verify the information submitted on or in
25 connection with the application.

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

28 (a) A class I deficiency is any act, omission, or
29 practice that results in a patient's death, disablement, or
30 permanent injury, or places a patient at imminent risk of
31 death, disablement, or permanent injury. Upon finding a class

1 I deficiency, the agency may impose an administrative fine in
2 the amount of \$5,000 for each occurrence and each day that the
3 deficiency exists. In addition, the agency may immediately
4 revoke the license, or impose a moratorium on the admission of
5 new patients, until the factors causing the deficiency have
6 been corrected.

7 (b) A class II deficiency is any act, omission, or
8 practice that has a direct adverse effect on the health,
9 safety, or security of a patient. Upon finding a class II
10 deficiency, the agency may impose an administrative fine in
11 the amount of \$1,000 for each occurrence and each day that the
12 deficiency exists. In addition, the agency may suspend the
13 license, or impose a moratorium on the admission of new
14 patients, until the factors causing the deficiency have been
15 corrected.

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

22 (d) A class IV deficiency is any act, omission, or
23 practice related to a required report, form, or document which
24 does not have the potential to negatively affect a patient. A
25 class IV deficiency is a deficiency that the agency determines
26 does not threaten the health, safety, or security of a
27 patient. Upon finding an uncorrected or repeated class IV
28 deficiency, the agency may impose an administrative fine not
29 to exceed \$200 for each occurrence and each day that the
30 uncorrected or repeated deficiency exists.

31

1 Section 49. Section 400.487, Florida Statutes, is
2 amended to read:

3 400.487 Patient assessment; establishment and review
4 of plan of care; provision of services.--

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

8 (2) The attending physician for a patient who is to
9 receive skilled receiving care ~~or treatment provided by a~~
10 ~~licensed nurse or by a physical, occupational, or speech~~
11 ~~therapist~~ must establish treatment orders ~~a plan of care for~~
12 ~~the patient on behalf of the home health agency that provides~~
13 ~~services to the patient.~~ The original plan of treatment
14 orders must be signed by the physician within 21 days after
15 the start of care and reviewed, at least every 62 days or more
16 frequently if the patient's illness requires, by the physician
17 in consultation with home health agency personnel that provide
18 services to the patient. Based on the assessment and the
19 treatment orders, the home health agency shall prepare a plan
20 of care that describes the services to be provided, the
21 frequency of service provision, and any other information
22 required by rule. The treatment orders and plan of care may be
23 incorporated into one document.

24 (3) If a client is accepted for home health aide
25 services, homemaker services, or companion services and such
26 services do not require a physician's order, the home health
27 agency shall establish a service-provision plan and maintain a
28 record of the services provided.

29 (4)~~(3)~~ Each patient or client has the right to be
30 informed of and to participate in the planning of his or her
31 care. Each patient must be provided, upon request, a copy of

1 the plan of care or service-provision plan established and
2 maintained for that patient or client by the home health
3 agency.

4 ~~(4) Home health services that are provided to a~~
5 ~~patient must be evaluated in the patient's home by a physician~~
6 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
7 ~~chapter 461 or by a registered nurse licensed under chapter~~
8 ~~464 as frequently as necessary to assure safe and adequate~~
9 ~~care, but not less frequently than once every 62 days.~~

10 (5) In the case of nursing services delivered by a
11 home health agency to a patient, the home health agency to
12 which a patient has been admitted for care must provide the
13 initial admission visit, all service evaluation visits, and
14 the discharge visit by qualified personnel who are on the
15 payroll of, and to whom an IRS payroll form W-2 will be issued
16 by, the home health agency at least one home health service to
17 patients for whom it has agreed to provide care. Services
18 provided by others under contractual arrangements to a home
19 health agency agency's patients must be monitored and managed
20 controlled by the admitting home health agency. The home
21 health agency is fully responsible for ensuring that all care
22 provided through its employees or contract staff is delivered
23 in accordance with this part and applicable rules.

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

27 Section 50. Section 400.491, Florida Statutes, is
28 amended to read:

29 400.491 Clinical records.--

30 (1) The home health agency must maintain for each
31 patient who receives skilled care a clinical record that

1 includes ~~the services the home health agency provides directly~~
2 ~~and those provided through arrangement with another health~~
3 ~~care provider, except for those services provided by persons~~
4 ~~referred under s. 400.509. Such records must contain~~
5 pertinent past and current medical, nursing, social and other
6 therapeutic information, the plan of treatment, and other such
7 information as is necessary for the safe and adequate care of
8 the patient. When home health services are terminated, the
9 record must show the date and reason for termination. Such
10 records are considered patient records under s. 455.241 ~~s.~~
11 ~~400.241~~, and must be maintained by the home health agency for
12 5 years following termination of services. If a patient
13 transfers to another home health agency, a copy of his or her
14 record must be provided to the other home health agency upon
15 request.

16 (2) The home health agency must maintain for each
17 client who receives nonskilled care a service-provision plan.
18 Such records must be maintained by the home health agency for
19 1 year following termination of services.

20 Section 51. Section 400.497, Florida Statutes, is
21 amended to read:

22 400.497 Rules establishing minimum standards.--The
23 agency ~~for Health Care Administration~~ shall adopt, publish,
24 and enforce rules to implement this part, including, as
25 applicable, ss. 400.506 and 400.509, which ~~must~~ provide
26 reasonable and fair minimum standards relating to:

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

28 (1)(2) The qualifications, and minimum training
29 requirements, and supervision requirements of all home health
30 agency personnel, including aides. The agency shall allow
31 shared staffing if the home health agency is part of a

1 retirement community that provides multiple levels of care, is
2 located on one campus, is licensed under this chapter, and
3 otherwise meets the requirements of law and rule.

4 (2)(3) Requirements for prospective employees

5 ~~Procedures for maintaining a record of the employment history~~
6 ~~of all home health agency personnel. A home health agency~~
7 ~~must require its personnel to submit an employment history to~~
8 ~~the home health agency, and verification of it must verify the~~
9 ~~employment history unless through diligent efforts such~~
10 ~~verification is not possible. The agency for Health Care~~
11 ~~Administration shall prescribe by rule the minimum~~
12 ~~requirements for establishing that diligent efforts have been~~
13 ~~made. The administrator of a home health agency must review~~
14 ~~the employment history and references of home health agency~~
15 ~~personnel and applicants for employment. The Agency for~~
16 ~~Health Care Administration must review the employment history~~
17 ~~and references of each administrator of a home health agency.~~
18 There is no monetary liability on the part of, and no cause of
19 action for damages arises against, a former employer of a
20 prospective employee of or prospective independent contractor
21 with a licensed home health agency who reasonably and in good
22 faith communicates his or her honest opinions about the former
23 employee's job performance. This subsection does not affect
24 the official immunity of an officer or employee of a public
25 corporation.

26 (3)(4) Licensure application and renewal.

27 (4)(5) The administration of the home health agency,
28 including requirements for onsite and electronic accessibility
29 of supervisory personnel.

30 (5)(6) Procedures for administering drugs and

31 biologicals.

1 ~~(6)(7)~~ Procedures for maintaining patients'~~patient~~
2 records.

3 ~~(7)(8)~~ Provision of ~~Ensuring that the~~ home health
4 services ~~provided~~ by a home health agency ~~are~~ in accordance
5 with the plan of care ~~treatment~~ established for each patient
6 for whom a plan of care is required.

7 ~~(8)(9)~~ Geographic service areas.

8 ~~(9)(10)~~ Standards for contractual arrangements for the
9 provision of home health services by providers not employed by
10 the home health agency providing for the patient's care and
11 treatment.

12 Section 52. Subsection (1) of section 400.506, Florida
13 Statutes, is amended, present subsections (2), (3), (4), (5),
14 (6), (7), (8), (10), (11), (12), (13), (14), (15), and (16) of
15 that section are redesignated as subsections (3), (4), (5),
16 (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), and
17 (17), respectively, present subsection (9) of that section is
18 redesignated as subsection (10) and amended, and a new
19 subsection (2) is added to that section, to read:

20 400.506 Licensure of nurse registries; requirements;
21 penalties.--

22 (1) A nurse registry is exempt from the licensing
23 requirements of a home health agency, but must be licensed as
24 a nurse registry. Each operational site of a nurse registry
25 must be licensed unless the nurse registry operates more than
26 one site within a county. If the nurse registry operates more
27 than one site within a county, only one license is required
28 for the sites within that county.

29 (2) Each applicant for licensure must comply with the
30 following requirements:

31

1 (a) Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening, in
3 accordance with the level 2 standards for screening set forth
4 in chapter 435, of the managing employee, or other similarly
5 titled individual who is responsible for the daily operation
6 of the nurse registry, and of the financial officer, or other
7 similarly titled individual who is responsible for the
8 financial operation of the registry, including billings for
9 patient care and services. The applicant shall comply with
10 the procedures for level 2 background screening as set forth
11 in chapter 435.

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

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

23 (d) A provisional license may be granted to an
24 applicant when each individual required by this section to
25 undergo background screening has met the standards for the
26 abuse registry background check and the Department of Law
27 Enforcement background check but the agency has not yet
28 received background screening results from the Federal Bureau
29 of Investigation. A standard license may be granted to the
30 applicant upon the agency's receipt of a report of the results
31 of the Federal Bureau of Investigation background screening

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

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

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

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

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

13 (h) The agency may deny or revoke the license if any
14 applicant:

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

19 2. Has had prior action taken against the applicant
20 under the Medicaid or Medicare program as set forth in
21 paragraph (e).

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

24 (10)(9)(a) A nurse registry may refer for contract in
25 private residences registered nurses and licensed practical
26 nurses registered and licensed under chapter 464, certified
27 nursing assistants certified under s. 400.211, home health
28 aides who present documented proof of successful completion of
29 the training required by rule of the agency, and ~~sitters,~~
30 companions, or homemakers for the purposes of providing those
31 services authorized under s. 400.509(1). A person referred by

1 a nurse registry must provide current documentation that he or
2 she is free from any communicable disease.

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

20 (c) A registered nurse shall make monthly visits to
21 the patient's home to assess the patient's condition and
22 quality of care being provided by the certified nursing
23 assistant or home health aide. Any condition which in the
24 professional judgment of the nurse requires further medical
25 attention shall be reported to the attending physician and the
26 nurse registry. The assessment shall become a part of the
27 patient's file with the nurse registry and may be reviewed by
28 the Agency for Health Care Administration during their survey
29 procedure.

30 ~~(d) In order to refer for contract in private~~
31 ~~residences a certified nursing assistant or any person~~

1 ~~specified in s. 400.509(1), the nurse registry and such person~~
2 ~~registered with the nurse registry must also be registered~~
3 ~~under s. 400.509. Any person registered as an independent~~
4 ~~contractor with a nurse registry for the purpose of providing~~
5 ~~services authorized under s. 400.509(1) on or before October~~
6 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
7 ~~as such person remains continuously registered with that nurse~~
8 ~~registry.~~

9 Section 53. Subsections (1) and (2) of section
10 400.509, Florida Statutes, are amended, present subsections
11 (3), (6), (7), (8), (9), (10), (11), (12), and (13) of that
12 section are redesignated as subsections (4), (7), (8), (9),
13 (10), (11), (12), (13), and (14), respectively, subsections
14 (4) and (5) of that section are redesignated as subsections
15 (5) and (6), respectively, and amended, and a new subsection
16 (3) is added to that section, to read:

17 400.509 Registration of particular service providers
18 exempt from licensure; certificate of registration; regulation
19 of registrants.--

20 (1) Any person who ~~that~~ provides domestic maid
21 services, ~~sitter services~~, companion services, or homemaker
22 services and does not provide a home health service to a
23 person is exempt from licensure under this part. However, any
24 person who ~~that~~ provides ~~sitter services for adults~~, companion
25 services, or homemaker services must register with the Agency
26 for Health Care Administration. This section does not apply to
27 an individual who provides services under a contract with the
28 Department of Children and Family Services and who has
29 undergone screening under s. 393.0655.
30
31

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

4 (a) The name, address, date of birth, and social
5 security number of the individual, ~~or the name and address of~~
6 ~~the person~~, providing the service.

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

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

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

18 (3) Each applicant for registration must comply with
19 the following requirements:

20 (a) Upon receipt of a completed, signed, and dated
21 application, the agency shall require background screening, in
22 accordance with the level 1 standards for screening set forth
23 in chapter 435, of the individual providing the service. If
24 the applicant is a firm or partnership, the agency shall
25 require background screening of the managing employee, or
26 other similarly titled individual who is responsible for the
27 operation of the entity, and of the financial officer, or
28 other similarly titled individual who is responsible for the
29 financial operation of the entity, including billings for
30 client services, in accordance with level 2 standards for
31 background screening as set forth in chapter 435.

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

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

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

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

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

26 (g) A registration may not be granted to an applicant
27 if the applicant or managing employee has been found guilty
28 of, regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

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

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

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

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

14 (5)(4) Each registrant must establish the employment
15 history of persons employed or under contract having contact
16 at any time with ~~clients~~ patients in their homes by:

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

19 (b) Verifying the employment history, unless through
20 diligent efforts such verification is not possible. The
21 agency ~~for Health Care Administration~~ shall prescribe by rule
22 the minimum requirements for establishing that diligent
23 efforts have been made.

24
25 There is no monetary liability on the part of, and no cause of
26 action for damages arises against, a former employer of a
27 prospective employee of or prospective independent contractor
28 with a registrant who reasonably and in good faith
29 communicates his or her honest opinions about the former
30 employee's job performance. This subsection does not affect
31

1 the official immunity of an officer or employee of a public
2 corporation.

3 (6)(5) On or before the first day on which services
4 are provided to a client ~~patient~~, any registrant under this
5 part must inform the client ~~patient~~ and his or her immediate
6 family, if appropriate, of the right to report abusive,
7 neglectful, or exploitative practices. The statewide
8 toll-free telephone number for the central abuse registry must
9 be provided to patients in a manner that is clearly legible
10 and must include the words: "To report abuse, neglect, or
11 exploitation, please call toll-free ...(phone number)...."
12 Registrants must establish appropriate policies and procedures
13 for providing such notice to clients ~~patients~~.

14 Section 54. Section 400.512, Florida Statutes, is
15 amended to read:

16 400.512 Screening of home health agency personnel;
17 nurse registry personnel; and ~~sitters, companions, and~~
18 ~~homemakers.--The agency for Health Care Administration~~ shall
19 require employment, or contractor, screening as provided in
20 chapter 435, using the level 1 standards for screening set
21 forth in that chapter, for home health agency personnel;
22 persons referred for contract employment by nurse registries;
23 and persons employed or referred by ~~sitter, companion, or~~
24 homemaker services registered under s. 400.509.

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

28 (2) The administrator of each home health agency,
29 nurse registry, or ~~sitter, companion, or~~ homemaker service
30 registered under s. 400.509 must sign an affidavit annually,
31 under penalty of perjury, stating that all personnel hired, or

1 registered, on or after October 1, 1994 ~~1989~~, who enter the
2 home of a patient or client in ~~the capacity of their service~~
3 capacity employment have been screened and that its remaining
4 personnel have worked for the home health agency or
5 registrant, or have been registered with the nurse registry,
6 continuously since before October 1, 1994 ~~1989~~.

7 (3) As a prerequisite to operating as a home health
8 agency, or ~~sitter, companion, or homemaker~~ service under s.
9 400.509, the administrator must submit to the agency his or
10 her ~~for Health Care Administration~~ their name and any other
11 information necessary to conduct a complete screening
12 according to this section. The agency ~~for Health Care~~
13 ~~Administration~~ shall submit the information to the Department
14 of Law Enforcement and the department's abuse hotline for
15 state processing. The agency ~~for Health Care Administration~~
16 shall review the record of the administrator with respect to
17 the offenses specified in this section and shall notify the
18 owner of its findings. If disposition information is missing
19 on a criminal record, the administrator, upon request of the
20 agency ~~for Health Care Administration~~, must obtain and supply
21 within 30 days the missing disposition information to the
22 agency ~~for Health Care Administration~~. Failure to supply
23 missing information within 30 days or to show reasonable
24 efforts to obtain such information will result in automatic
25 disqualification.

26 (4) Proof of compliance with the screening
27 requirements of chapter 435 shall be accepted in lieu of the
28 requirements of this section if the ~~provided that~~ such person
29 has been continuously employed, or registered, without a
30 breach in service that exceeds 180 days, the proof of
31 compliance is not more than 2 years old, and the person has

1 been screened through the central abuse registry and tracking
2 system of the department and by the Department of Law
3 Enforcement. An employer or registry shall directly provide
4 proof of compliance to another home health agency or registry,
5 and a potential home health agency or registry may not accept
6 any proof of compliance directly from the person who requires
7 screening. Proof of compliance with the screening requirements
8 of this section shall be provided upon request to the person
9 screened by the home health agencies; nurse registries; or
10 ~~sitter, companion, or homemaker services registered under s.~~
11 400.509.

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

24 (6) The costs of processing the statewide
25 correspondence criminal records checks and the search of the
26 department's central abuse hotline must be borne by the home
27 health agency; the nurse registry; or the ~~sitter, companion,~~
28 or homemaker service registered under s. 400.509, or by the
29 person being screened, at the discretion of the home health
30 agency, nurse registry, or s. 400.509 registrant.

31

1 ~~(7) The Agency for Health Care Administration; the~~
2 ~~home health agency; nurse registry; or sitter, companion, or~~
3 ~~homemaker service registered under s. 400.509 may not use the~~
4 ~~criminal records, juvenile records, or central abuse hotline~~
5 ~~information of a person for any purpose other than determining~~
6 ~~whether that person meets minimum standards of good moral~~
7 ~~character for home health agency personnel. The criminal~~
8 ~~records, juvenile records, or central abuse hotline~~
9 ~~information obtained by the Agency for Health Care~~
10 ~~Administration; home health agency; nurse registry; or sitter,~~
11 ~~companion, or homemaker service for determining the moral~~
12 ~~character of such personnel are confidential and exempt from~~
13 ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~
14 ~~State Constitution.~~

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

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

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

27 ~~3. Use information from the criminal records or~~
28 ~~central abuse hotline obtained under this section for any~~
29 ~~purpose other than screening that person for employment as~~
30 ~~specified in this section or release such information to any~~
31

1 ~~other person for any purpose other than screening for~~
2 ~~employment under this section.~~

3 ~~(b) It is a felony of the third degree, punishable~~
4 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
5 ~~willfully, knowingly, or intentionally to use information from~~
6 ~~the juvenile records of a person obtained under this section~~
7 ~~for any purpose other than screening for employment under this~~
8 ~~section.~~

9 Section 55. Subsection (2) of section 400.555, Florida
10 Statutes, is amended to read:

11 400.555 Application for license.--

12 (2) The applicant for licensure must furnish:

13 (a) A description of the physical and mental
14 capabilities and needs of the participants to be served and
15 the availability, frequency, and intensity of basic services
16 and of supportive and optional services to be provided;

17 (b) Satisfactory proof of financial ability to operate
18 and conduct the center in accordance with the requirements of
19 this part, which must include, in the case of an initial
20 application, a 1-year operating plan and proof of a 3-month
21 operating reserve fund; and

22 (c) Proof of adequate liability insurance coverage.

23 (d) Proof of compliance with level 2 background
24 screening as required under s. 400.5572.

25 (e) A description and explanation of any exclusions,
26 permanent suspensions, or terminations of the application from
27 the Medicare or Medicaid programs. Proof of compliance with
28 disclosure of ownership and control interest requirements of
29 the Medicare or Medicaid programs shall be accepted in lieu of
30 this submission.

31

1 Section 56. Subsection (2) of section 400.556, Florida
2 Statutes, is amended to read:

3 400.556 Denial, suspension, revocation of license;
4 administrative fines; investigations and inspections.--

5 (2) Each of the following actions by the owner of an
6 adult day care center or by its operator or employee is a
7 ground for action by the agency against the owner of the
8 center or its operator or employee:

9 (a) An intentional or negligent act materially
10 affecting the health or safety of center participants.

11 (b) A violation of this part or of any standard or
12 rule under this part.

13 (c) A failure of persons subject to level 2 background
14 screening under s. 400.4174(1) to meet the screening standards
15 of s. 435.04, or the retention by the center of an employee
16 subject to level 1 background screening standards under s.
17 400.4174(2) who does not meet the screening standards of s.
18 435.03 and for whom exemptions from disqualification have not
19 been provided by the agency.~~A confirmed report of adult~~
20 ~~abuse, neglect, or exploitation, as defined in s. 415.102, or~~
21 ~~of child abuse or neglect, as defined in s. 415.503, which~~
22 ~~report has been upheld following a hearing held pursuant to~~
23 ~~chapter 120 or a waiver of such hearing.~~

24 (d) Failure to follow the criteria and procedures
25 provided under part I of chapter 394 relating to the
26 transportation, voluntary admission, and involuntary
27 examination of center participants.

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

30 (f) Exclusion, permanent suspension, or termination of
31 the owner, if an individual, officer, or board member of the

1 adult day care center, if the owner is a firm, corporation,
2 partnership, or association, or any person owning 5 percent or
3 more of the center, from the Medicare or Medicaid program.

4 Section 57. Subsection (1) of section 400.557, Florida
5 Statutes, is amended to read:

6 400.557 Expiration of license; renewal; conditional
7 license or permit.--

8 (1) A license issued for the operation of an adult day
9 care center, unless sooner suspended or revoked, expires 2
10 years after the date of issuance. The agency shall notify a
11 licensee by certified mail, return receipt requested, at least
12 120 days before the expiration date that license renewal is
13 required to continue operation. At least 90 days prior to the
14 expiration date, an application for renewal must be submitted
15 to the agency. A license shall be renewed, upon the filing of
16 an application on forms furnished by the agency, if the
17 applicant has first met the requirements of this part and of
18 the rules adopted under this part. The applicant must file
19 with the application satisfactory proof of financial ability
20 to operate the center in accordance with the requirements of
21 this part and in accordance with the needs of the participants
22 to be served and an affidavit of compliance with the
23 background screening requirements of s. 400.5572.

24 Section 58. Section 400.5572, Florida Statutes, is
25 created to read:

26 400.5572 Background screening.--

27 (1)(a) Level 2 background screening must be conducted
28 on each of the following persons, who shall be considered
29 employees for the purposes of conducting screening under
30 chapter 435:

31

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

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

23 (b) Proof of compliance with level 2 screening
24 standards which has been submitted within the previous 5 years
25 to meet any facility or professional licensure requirements of
26 the agency or the Department of Health satisfies the
27 requirements of this subsection.

28 (c) The agency may grant a provisional license to an
29 adult day care center applying for an initial license when
30 each individual required by this subsection to undergo
31 screening has completed the abuse registry and Department of

1 Law Enforcement background checks, but has not yet received
2 results from the Federal Bureau of Investigation, or when a
3 request for an exemption from disqualification has been
4 submitted to the agency pursuant to s. 435.07, but a response
5 has not been issued.

6 (2) The owner or administrator of an adult day care
7 center must conduct level 1 background screening as set forth
8 in chapter 435 on all employees hired on or after October 1,
9 1998, who provide basic services or supportive and optional
10 services to the participants. Such persons satisfy this
11 requirement if:

12 (a) Proof of compliance with level 1 screening
13 requirements obtained to meet any professional license
14 requirements in this state is provided and accompanied, under
15 penalty of perjury, by a copy of the person's current
16 professional license and an affidavit of current compliance
17 with the background screening requirements.

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

28 (c) The person required to be screened is employed by
29 a corporation or business entity or related corporation or
30 business entity that owns, operates, or manages more than one
31 facility or agency licensed under chapter 400, and for whom a

1 level 1 screening was conducted by the corporation or business
2 entity as a condition of initial or continued employment.

3 (3) When an employee, volunteer, operator, or owner of
4 an adult day care center is the subject of a confirmed report
5 of adult abuse, neglect, or exploitation, as defined in s.
6 415.102, and the protective investigator knows that the
7 individual is an employee, volunteer, operator, or owner of a
8 center, the agency shall be notified of the confirmed report.

9 Section 59. Section 400.606, Florida Statutes, is
10 amended to read:

11 400.606 License; application; renewal; conditional
12 license or permit; certificate of need.--

13 (1) A license application must be filed on a form
14 provided by the agency and must be accompanied by the
15 appropriate license fee as well as satisfactory proof that the
16 hospice is in compliance with this part and any rules adopted
17 by the department and proof of financial ability to operate
18 and conduct the hospice in accordance with the requirements of
19 this part. The initial application must be accompanied by a
20 plan for the delivery of home, residential, and homelike
21 inpatient hospice services to terminally ill persons and their
22 families. Such plan must contain, but need not be limited to:

23 (a) The estimated average number of terminally ill
24 persons to be served monthly.

25 (b) The geographic area in which hospice services will
26 be available.

27 (c) A listing of services which are or will be
28 provided, either directly by the applicant or through
29 contractual arrangements with existing providers.

30 (d) Provisions for the implementation of hospice home
31 care within 3 months after licensure.

1 (e) Provisions for the implementation of hospice
2 homelike inpatient care within 12 months after licensure.

3 (f) The number and disciplines of professional staff
4 to be employed.

5 (g) The name and qualifications of any existing or
6 potential contractee.

7 (h) A plan for attracting and training volunteers.

8 (i) The projected annual operating cost of the
9 hospice.

10 (j) A statement of financial resources and personnel
11 available to the applicant to deliver hospice care.

12
13 If the applicant is an existing health care provider, the
14 application must be accompanied by a copy of the most recent
15 profit-loss statement and, if applicable, the most recent
16 licensure inspection report.

17 (2) Each applicant must submit to the agency with its
18 application a description and explanation of any exclusions,
19 permanent suspensions, or terminations from the Medicaid or
20 Medicare programs of the owner, if an individual, of any
21 officer or board member of the hospice, if the owner is a
22 firm, corporation, partnership, or association, or of any
23 person owning 5 percent or more of the hospice. Proof of
24 compliance with disclosure-of-ownership and control-interest
25 requirements of the Medicaid or Medicare programs may be
26 accepted in lieu of this submission.

27 (3)~~(2)~~ A license issued for the operation of a
28 hospice, unless sooner suspended or revoked, shall expire
29 automatically 1 year from the date of issuance. Sixty days
30 prior to the expiration date, a hospice wishing to renew its
31 license shall submit an application for renewal to the agency

1 on forms furnished by the agency. The agency shall renew the
2 license if the applicant has first met the requirements
3 established under this part and all applicable rules and has
4 provided the information described under this section ~~in~~
5 ~~subsection (1)~~ in addition to the application. However, the
6 application for license renewal shall be accompanied by an
7 update of the plan for delivery of hospice care only if
8 information contained in the plan submitted pursuant to
9 subsection (1) is no longer applicable.

10 (4)~~(3)~~ A hospice against which a revocation or
11 suspension proceeding is pending at the time of license
12 renewal may be issued a conditional license by the agency
13 effective until final disposition of such proceeding. If
14 judicial relief is sought from the final agency action, the
15 court having jurisdiction may issue a conditional permit for
16 the duration of the judicial proceeding.

17 (5)~~(4)~~ The agency shall not issue a license to a
18 hospice that fails to receive a certificate of need under the
19 provisions of ss. 408.031-408.045. A licensed hospice is a
20 health care facility as that term is used in s. 408.039(5) and
21 is entitled to initiate or intervene in an administrative
22 hearing.

23 (6)~~(5)~~ A freestanding hospice facility that is
24 primarily engaged in providing inpatient and related services
25 and that is not otherwise licensed as a health care facility
26 shall be required to obtain a certificate of need. However, a
27 freestanding hospice facility with six or fewer beds shall not
28 be required to comply with institutional standards such as,
29 but not limited to, standards requiring sprinkler systems,
30 emergency electrical systems, or special lavatory devices.

31

1 Section 60. Section 400.6065, Florida Statutes, is
2 created to read:

3 400.6065 Background screening.--

4 (1) Upon receipt of a completed application under s.
5 400.606, the agency shall require level 2 background screening
6 on each of the following persons, who shall be considered
7 employees for the purposes of conducting screening under
8 chapter 435:

9 (a) The hospice administrator and financial officer.

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

30 (2) Proof of compliance with level 2 screening
31 standards which has been submitted within the previous 5 years

1 to meet any facility or professional licensure requirements of
2 the agency or the Department of Health satisfies the
3 requirements of this section.

4 (3) The agency may grant a provisional license to a
5 hospice applying for an initial license when each individual
6 required by this section to undergo screening has completed
7 the abuse registry and Department of Law Enforcement
8 background checks but has not yet received results from the
9 Federal Bureau of Investigation.

10 Section 61. Present subsections (3), (4), (5), and (6)
11 of section 400.607, Florida Statutes, are redesignated as
12 subsections (4), (5), (6), and (7), respectively, and a new
13 subsection (3) is added to that section, to read:

14 400.607 Denial, suspension, or revocation of license;
15 imposition of administrative fine; grounds; injunctions.--

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

18 (a) Persons subject to level 2 background screening
19 under s. 400.6065 do not meet the screening standards of s.
20 435.04, and exemptions from disqualification have not been
21 provided by the agency.

22 (b) An officer, board member, or person owning 5
23 percent or more of the hospice has been excluded, permanently
24 suspended, or terminated from the Medicare or Medicaid
25 programs.

26 Section 62. Section 400.619, Florida Statutes, is
27 amended to read:

28 400.619 Licensure application and renewal
29 requirements.--

30 (1) Each person who intends to be ~~a provider~~ of an
31 adult family-care home provider must obtain a license from the

1 ~~agency before caring for a disabled adult or an aged person in~~
2 ~~the adult family-care home. Such application must be made at~~
3 ~~least 90 days before the applicant intends to operate the~~
4 ~~adult family-care home.~~

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

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

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

23 (a) Proof of compliance with level 1 screening
24 standards which has been submitted within the previous 5 years
25 to meet any facility or professional licensure requirements of
26 the agency or the Department of Health satisfies the
27 requirements of this subsection. Such proof must be
28 accompanied, under penalty of perjury, by a copy of the
29 person's current professional license and an affidavit of
30 current compliance with the background screening requirements.

31

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

11 (5) The application must be accompanied by a
12 description and explanation of any exclusions, permanent
13 suspensions, or terminations of the applicant from
14 participation in the Medicaid or Medicare programs or any
15 other governmental health care or health insurance program.

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

21 (7)(5) Access to a licensed adult family-care home
22 must be provided at reasonable times for the appropriate
23 officials of the department, the Department of Health, the
24 Department of Children and Family Services ~~and Rehabilitative~~
25 ~~Services~~, the agency, and the State Fire Marshal, who are
26 responsible for the development and maintenance of fire,
27 health, sanitary, and safety standards, to inspect the
28 facility to assure compliance with these standards. In
29 addition, access to a licensed adult family-care home must be
30 provided at reasonable times for the long-term care ombudsman
31 council.

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

8 (9)~~(7)~~ A license is not transferable or applicable to
9 any location or person other than the location and ~~or~~ person
10 indicated on the license ~~application for licensure~~.

11 (10)~~(8)~~ The licensed maximum capacity of each adult
12 family-care home is based on the service needs of the
13 residents and the capability of the provider to meet the needs
14 of the residents. Any relative who lives in the adult
15 family-care home and who is an aged person or a disabled adult
16 must be included in that limitation.

17 (11)~~(9)~~ Each adult family-care home must designate at
18 least one licensed space for a resident receiving optional
19 state supplementation ~~as defined in s. 409.212~~. The
20 Department of Children and Family Health and Rehabilitative
21 Services shall specify by rule the procedures to be followed
22 for referring residents who receive optional state
23 supplementation to adult family-care homes. Those homes
24 licensed as adult foster homes or assisted living facilities
25 prior to January 1, 1994, that convert to adult family-care
26 homes, are exempt from this ~~the~~ requirement of ~~designating one~~
27 ~~space for a resident receiving optional state supplementation~~.

28 (12)~~(10)~~ The agency may issue a conditional license to
29 a provider for the purpose of bringing the adult family-care
30 home into compliance with licensure requirements. A
31 conditional license must be limited to a specific period, not

1 ~~exceeding 6 months, as determined by the department, in~~
2 ~~consultation with the agency.~~ The department shall, by rule,
3 establish criteria for issuing conditional licenses.

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

6 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
7 ~~abuse, neglect, or exploitation, or conviction of a crime~~
8 ~~related to abuse, neglect, or exploitation.~~

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

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

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

18 ~~(e) Submission of fraudulent or inaccurate information~~
19 ~~to the agency.~~

20 ~~(f) Conviction of a felony involving violence to a~~
21 ~~person.~~

22 ~~(g) Failure to pay a civil penalty assessed under this~~
23 ~~part.~~

24 (13)~~(12)~~ All moneys collected under this section must
25 be deposited into the Department of Elderly Affairs
26 Administrative Trust Fund and ~~must be~~ used to offset the
27 expenses of departmental training and education for adult
28 family-care home providers.

29 (14)~~(13)~~ The department may ~~shall~~ adopt rules to
30 establish procedures, identify forms, specify documentation,

31

1 and clarify licensure requirements, as necessary to administer
2 implement this section.

3 Section 63. Section 400.6194, Florida Statutes, is
4 created to read:

5 400.6194 Denial, revocation, or suspension of a
6 license.--The agency may deny, suspend, or revoke a license
7 for any of the following reasons:

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

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

15 (3) Failure to comply with any restrictions specified
16 in the license.

17 (4) Submission of fraudulent information or omission
18 of any material fact on a license application or any other
19 document required by the agency.

20 (5) Failure to pay an administrative fine assessed
21 under this part.

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

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

27 (8) Failure to submit a completed initial license
28 application or to complete an application for license renewal
29 within the specified timeframes.

30 (9) Exclusion, permanent suspension, or termination of
31 the provider from the Medicare or Medicaid program.

1 Section 64. Section 400.801, Florida Statutes, is
2 amended to read:

3 400.801 Homes for special services.--

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

5 (a) "Agency" means the~~"~~Agency for Health Care
6 Administration.~~"~~

7 (b) "Home for special services" means a site where
8 specialized health care services are provided, including
9 personal and custodial care, but not continuous nursing
10 services.

11 (2) A person must obtain a license from the agency to
12 operate a home for special services. A license is valid for 1
13 year.

14 (3) The application for a license under this section
15 must be made on a form provided by the agency. A
16 nonrefundable license fee of not more than \$1,000 must be
17 submitted with the license application.

18 (4) Each applicant for licensure must comply with the
19 following requirements:

20 (a) Upon receipt of a completed, signed, and dated
21 application, the agency shall require background screening, in
22 accordance with the level 2 standards for screening set forth
23 in chapter 435, of the managing employee, or other similarly
24 titled individual who is responsible for the daily operation
25 of the facility, and of the financial officer, or other
26 similarly titled individual who is responsible for the
27 financial operation of the facility, including billings for
28 client care and services, in accordance with the level 2
29 standards for screening set forth in chapter 435. The
30 applicant must comply with the procedures for level 2
31 background screening as set forth in chapter 435.

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

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

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

1 background screening standards and a disqualification
2 exemption has not been requested of and granted by the agency
3 as set forth in chapter 435.

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

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

29 (g) A license may not be granted to an applicant if
30 the applicant or managing employee has been found guilty of,
31 regardless of adjudication, or has entered a plea of nolo

1 contendere or guilty to, any offense prohibited under the
2 level 2 standards for screening set forth in chapter 435,
3 unless an exemption from disqualification has been granted by
4 the agency as set forth in chapter 435.

5 (h) The agency may deny or revoke licensure if the
6 applicant:

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

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

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

16 (5)(4) Application for license renewal must be
17 submitted 90 days before the expiration of the license.

18 (6)(5) A change of ownership or control of a home for
19 special services must be reported to the agency in writing at
20 least 60 days before the change is scheduled to take effect.

21 (7)(6) The agency shall adopt rules for implementing
22 and enforcing this section.

23 (8)(7)(a) It is unlawful for any person to establish,
24 conduct, manage, or operate a home for special services
25 without obtaining a license from the agency.

26 (b) It is unlawful for any person to offer or
27 advertise to the public, in any medium whatever, specialized
28 health care services without obtaining a license from the
29 agency.

30 (c) It is unlawful for a holder of a license issued
31 under this section to advertise or represent to the public

1 that it holds a license for a type of facility other than the
2 facility for which its license is issued.

3 (9)~~(8)~~(a) A violation of any provision of this section
4 or rules adopted by the agency for implementing this section
5 is punishable by payment of an administrative fine not to
6 exceed \$5,000.

7 (b) A violation of subsection~~(8)~~~~(7)~~or rules adopted
8 under that subsection is a misdemeanor of the first degree,
9 punishable as provided in s. 775.082 or s. 775.083. Each day
10 of continuing violation is a separate offense.

11 Section 65. Present subsections (4), (5), and (6) of
12 section 400.805, Florida Statutes, are redesignated as
13 subsections (5), (6), and (7), respectively, present
14 subsections (3) and (7) of that section are redesignated as
15 subsections (4) and (8), respectively, and amended, and a new
16 subsection (3) is added to that section, to read:

17 400.805 Transitional living facilities.--

18 (3) Each applicant for licensure must comply with the
19 following requirements:

20 (a) Upon receipt of a completed, signed, and dated
21 application, the agency shall require background screening, in
22 accordance with the level 2 standards for screening set forth
23 in chapter 435, of the managing employee, or other similarly
24 titled individual who is responsible for the daily operation
25 of the facility, and of the financial officer, or other
26 similarly titled individual who is responsible for the
27 financial operation of the facility, including billings for
28 client care and services. The applicant must comply with the
29 procedures for level 2 background screening as set forth in
30 chapter 435.

31

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

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

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

1 background screening standards and a disqualification
2 exemption has not been requested of and granted by the agency
3 as set forth in chapter 435.

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

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

29 (g) A license may not be granted to an applicant if
30 the applicant or managing employee has been found guilty of,
31 regardless of adjudication, or has entered a plea of nolo

1 contendere or guilty to, any offense prohibited under the
2 level 2 standards for screening set forth in chapter 435,
3 unless an exemption from disqualification has been granted by
4 the agency as set forth in chapter 435.

5 (h) The agency may deny or revoke licensure if the
6 applicant:

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

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

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

16 ~~(4)(3)~~ An application for renewal of license must be
17 submitted 90 days before the expiration of the license. Upon
18 renewal of licensure, each applicant must submit to the
19 agency, under penalty of perjury, an affidavit as set forth in
20 s. 400.805(3)(d).

21 ~~(8)(7)(a)~~ A violation of any provision of this section
22 or rules adopted by the agency or division under this section
23 is punishable by payment of an administrative or a civil
24 penalty fine not to exceed \$5,000.

25 (b) A violation of subsection(7)(6)or rules adopted
26 under that subsection is a misdemeanor of the first degree,
27 punishable as provided in s. 775.082 or s. 775.083. Each day
28 of a continuing violation is a separate offense.

29 Section 66. Subsection (2) of section 430.04, Florida
30 Statutes, is amended to read:

31

1 430.04 Duties and responsibilities of the Department
2 of Elderly Affairs.--The Department of Elderly Affairs shall:

3 (2) Be responsible for ensuring that each area agency
4 on aging operates in a manner to ensure that the elderly of
5 this state receive the best services possible. The department
6 shall rescind designation of an area agency on aging or take
7 intermediate measures against the agency, including corrective
8 action, unannounced special monitoring, temporary assumption
9 of operation of one or more programs by the department,
10 placement on probationary status, imposing a moratorium on
11 agency action, imposing financial penalties for
12 nonperformance, or other administrative action pursuant to
13 chapter 120, if the department finds that:

14 (a) An intentional or negligent act of the agency has
15 materially affected the health, welfare, or safety of clients,
16 or substantially and negatively affected the operation of an
17 aging services program.

18 (b) The agency lacks financial stability sufficient to
19 meet contractual obligations or that contractual funds have
20 been misappropriated.

21 (c) The agency has committed multiple or repeated
22 violations of legal and regulatory requirements or department
23 standards.

24 (d) The agency has failed to continue the provision or
25 expansion of services after the declaration of a state of
26 emergency.

27 (e) The agency has failed to adhere to the terms of
28 its contract with the department.

29 (f) The agency has failed to implement and maintain a
30 department-approved client grievance resolution procedure.

31

1 Section 67. Paragraphs (i) and (k) of subsection (3)
2 of section 455.654, Florida Statutes, are amended to read:

3 455.654 Financial arrangements between referring
4 health care providers and providers of health care services.--

5 (3) DEFINITIONS.--For the purpose of this section, the
6 word, phrase, or term:

7 (i) "Investment interest" means an equity or debt
8 security issued by an entity, including, without limitation,
9 shares of stock in a corporation, units or other interests in
10 a partnership, bonds, debentures, notes, or other equity
11 interests or debt instruments. ~~Except for purposes of s.~~
12 ~~455.661~~,The following investment interests shall be excepted
13 from this definition:

14 1. An investment interest in an entity that is the
15 sole provider of designated health services in a rural area;

16 2. An investment interest in notes, bonds, debentures,
17 or other debt instruments issued by an entity which provides
18 designated health services, as an integral part of a plan by
19 such entity to acquire such investor's equity investment
20 interest in the entity, provided that the interest rate is
21 consistent with fair market value, and that the maturity date
22 of the notes, bonds, debentures, or other debt instruments
23 issued by the entity to the investor is not later than October
24 1, 1996.

25 3. An investment interest in real property resulting
26 in a landlord-tenant relationship between the health care
27 provider and the entity in which the equity interest is held,
28 unless the rent is determined, in whole or in part, by the
29 business volume or profitability of the tenant or exceeds fair
30 market value; or

31

1 4. An investment interest in an entity which owns or
2 leases and operates a hospital licensed under chapter 395 or a
3 nursing home facility licensed under chapter 400.

4 (k) "Referral" means any referral of a patient by a
5 health care provider for health care services, including,
6 without limitation:

7 1. The forwarding of a patient by a health care
8 provider to another health care provider or to an entity which
9 provides or supplies designated health services or any other
10 health care item or service; or

11 2. The request or establishment of a plan of care by a
12 health care provider, which includes the provision of
13 designated health services or other health care item or
14 service.

15 3. ~~Except for the purposes of s. 455.661,~~The
16 following orders, recommendations, or plans of care shall not
17 constitute a referral by a health care provider:

18 a. By a radiologist for diagnostic-imaging services.

19 b. By a physician specializing in the provision of
20 radiation therapy services for such services.

21 c. By a medical oncologist for drugs and solutions to
22 be prepared and administered intravenously to such
23 oncologist's patient, as well as for the supplies and
24 equipment used in connection therewith to treat such patient
25 for cancer and the complications thereof.

26 d. By a cardiologist for cardiac catheterization
27 services.

28 e. By a pathologist for diagnostic clinical laboratory
29 tests and pathological examination services, if furnished by
30 or under the supervision of such pathologist pursuant to a
31 consultation requested by another physician.

1 f. By a health care provider who is the sole provider
2 or member of a group practice for designated health services
3 or other health care items or services that are prescribed or
4 provided solely for such referring health care provider's or
5 group practice's own patients, and that are provided or
6 performed by or under the direct supervision of such referring
7 health care provider or group practice.

8 g. By a health care provider for services provided by
9 an ambulatory surgical center licensed under chapter 395.

10 h. By a health care provider for diagnostic clinical
11 laboratory services where such services are directly related
12 to renal dialysis.

13 i. By a urologist for lithotripsy services.

14 j. By a dentist for dental services performed by an
15 employee of or health care provider who is an independent
16 contractor with the dentist or group practice of which the
17 dentist is a member.

18 k. By a physician for infusion therapy services to a
19 patient of that physician or a member of that physician's
20 group practice.

21 l. By a nephrologist for renal dialysis services and
22 supplies.

23 Section 68. Subsection (1) of section 468.505, Florida
24 Statutes, is amended to read:

25 468.505 Exemptions; exceptions.--

26 (1) Nothing in this part may be construed as
27 prohibiting or restricting the practice, services, or
28 activities of:

29 (a) A person licensed in this state under chapter 457,
30 chapter 458, chapter 459, chapter 460, chapter 461, chapter
31 462, chapter 463, chapter 464, chapter 465, chapter 466,

1 chapter 480, chapter 490, or chapter 491, when engaging in the
2 profession or occupation for which he or she is licensed, or
3 of any person employed by and under the supervision of the
4 licensee when rendering services within the scope of the
5 profession or occupation of the licensee.†

6 (b) A person employed as a dietitian by the government
7 of the United States, if the person engages in dietetics
8 solely under direction or control of the organization by which
9 the person is employed.†

10 (c) A person employed as a cooperative extension home
11 economist.†

12 (d) A person pursuing a course of study leading to a
13 degree in dietetics and nutrition from a program or school
14 accredited pursuant to s. 468.509(2), if the activities and
15 services constitute a part of a supervised course of study and
16 if the person is designated by a title that clearly indicates
17 the person's status as a student or trainee.†

18 (e) A person fulfilling the supervised experience
19 component of s. 468.509, if the activities and services
20 constitute a part of the experience necessary to meet the
21 requirements of s. 468.509.†

22 (f) Any dietitian or nutritionist from another state
23 practicing dietetics or nutrition incidental to a course of
24 study when taking or giving a postgraduate course or other
25 course of study in this state, provided such dietitian or
26 nutritionist is licensed in another jurisdiction or is a
27 registered dietitian or holds an appointment on the faculty of
28 a school accredited pursuant to s. 468.509(2).†

29 (g) A person who markets or distributes food, food
30 materials, or dietary supplements, or any person who engages
31 in the explanation of the use and benefits of those products

1 or the preparation of those products, if that person does not
2 engage for a fee in dietetics and nutrition practice or
3 nutrition counseling.†

4 (h) A person who markets or distributes food, food
5 materials, or dietary supplements, or any person who engages
6 in the explanation of the use of those products or the
7 preparation of those products, as an employee of an
8 establishment permitted pursuant to chapter 465.†

9 (i) An educator who is in the employ of a nonprofit
10 organization approved by the council; a federal, state,
11 county, or municipal agency, or other political subdivision;
12 an elementary or secondary school; or an accredited
13 institution of higher education the definition of which, as
14 provided in s. 468.509(2), applies to other sections of this
15 part, insofar as the activities and services of the educator
16 are part of such employment.†

17 (j) Any person who provides weight control services or
18 related weight control products, provided the program has been
19 reviewed by, consultation is available from, and no program
20 change can be initiated without prior approval by a licensed
21 dietitian/nutritionist, a dietitian or nutritionist licensed
22 in another state that has licensure requirements considered by
23 the council to be at least as stringent as the requirements
24 for licensure under this part, or a registered dietitian.†

25 (k) A person employed by a hospital licensed under
26 chapter 395, or by a nursing home or assisted living facility
27 licensed under part II or part III of chapter 400, or by a
28 continuing care facility certified under chapter 651, if the
29 person is employed in compliance with the laws and rules
30 adopted thereunder regarding the operation of its dietetic
31 department.†

1 (1) A person employed by a nursing facility exempt
2 from licensing under s. 395.002(14)~~s. 395.002(12)~~, or a
3 person exempt from licensing under s. 464.022. ~~†~~ or

4 (m) A person employed as a dietetic technician.

5 Section 69. Section 483.101, Florida Statutes, is
6 amended to read:

7 483.101 Application for clinical laboratory license.--

8 (1) An application for a clinical laboratory license
9 must be made under oath by the owner or ~~director~~ operator of
10 the clinical laboratory or by the public official responsible
11 for operating a state, municipal, or county clinical
12 laboratory or institution that contains a clinical laboratory,
13 upon forms provided by the agency.

14 (2) Each applicant for licensure must comply with the
15 following requirements:

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

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

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

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

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

10 (3) A license must be issued authorizing the
11 performance of one or more clinical laboratory procedures or
12 one or more tests on each specialty or subspecialty. A
13 separate license is required of all laboratories maintained on
14 separate premises even if the laboratories are operated under
15 the same management. Upon receipt of a request for an
16 application for a clinical laboratory license, the agency
17 shall provide to the applicant a copy of the rules relating to
18 licensure and operations applicable to the laboratory for
19 which licensure is sought.

20 Section 70. Section 483.106, Florida Statutes, is
21 amended to read:

22 483.106 Application for a certificate of
23 exemption.--An application for a certificate of exemption must
24 be made under oath by the owner or director ~~operator~~ of a
25 clinical laboratory that performs only waived tests as defined
26 in s. 483.041. A certificate of exemption authorizes a
27 clinical laboratory to perform waived tests. Laboratories
28 maintained on separate premises and operated under the same
29 management may apply for a single certificate of exemption or
30 multiple certificates of exemption. The agency shall, by rule,
31 specify the process for biennially issuing certificates of

1 exemption. Sections 483.011, 483.021, 483.031, 483.041,
2 483.172, 483.23, and 483.25 apply to a clinical laboratory
3 that obtains a certificate of exemption under this section.

4 Section 71. Section 483.30, Florida Statutes, is
5 amended to read:

6 483.30 Licensing of centers.--

7 (1) A person may not conduct, maintain, or operate a
8 multiphasic health testing center in this state without
9 obtaining a multiphasic health testing center license from the
10 agency. The license is valid only for the person or persons
11 to whom it is issued and may not be sold, assigned, or
12 transferred, voluntarily or involuntarily. A license is not
13 valid for any premises other than the center for which it is
14 issued. However, a new license may be secured for the new
15 location for a fixed center before the actual change, if the
16 contemplated change is in compliance with this part and the
17 rules adopted under this part. A center must be relicensed if
18 a change of ownership occurs. Application for relicensure
19 must be made 60 days before the change of ownership.

20 (2) Each applicant for licensure must comply with the
21 following requirements:

22 (a) Upon receipt of a completed, signed, and dated
23 application, the agency shall require background screening, in
24 accordance with the level 2 standards for screening set forth
25 in chapter 435, of the managing employee, or other similarly
26 titled individual who is responsible for the daily operation
27 of the center, and of the financial officer, or other
28 similarly titled individual who is responsible for the
29 financial operation of the center, including billings for
30 patient services. The applicant must comply with the

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1 procedures for level 2 background screening as set forth in
2 chapter 435, as well as the requirements of s. 435.03(3).

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

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

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

1 to serve if the report indicates any violation of background
2 screening standards and a disqualification exemption has not
3 been requested of and granted by the agency as set forth in
4 chapter 435.

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

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

30 (g) A license may not be granted to an applicant if
31 the applicant or managing employee has been found guilty of,

1 regardless of adjudication, or has entered a plea of nolo
2 contendere or guilty to, any offense prohibited under the
3 level 2 standards for screening set forth in chapter 435,
4 unless an exemption from disqualification has been granted by
5 the agency as set forth in chapter 435.

6 (h) The agency may deny or revoke licensure if the
7 applicant:

8 1. Has falsely represented a material fact in the
9 application required by paragraph (e) or paragraph (f), or has
10 omitted any material fact from the application required by
11 paragraph (e) or paragraph (f); or

12 2. Has had prior action taken against the applicant
13 under the Medicaid or Medicare program as set forth in
14 paragraph (e).

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

17 Section 72. Section 455.661, Florida Statutes, is
18 repealed.

19 Section 73. Two full-time positions are allocated to
20 the Agency for Health Care Administration to implement and
21 administer a background screening exemption program pursuant
22 to section 400.4174, Florida Statutes, as amended by this act,
23 section 400.5572, Florida Statutes, as created by this act,
24 and chapter 435, Florida Statutes, and the sum of \$127,609 is
25 appropriated from the Health Care Trust Fund for this purpose.

26 Section 74. The provisions of this act which require
27 an applicant for licensure, certification, or registration to
28 undergo background screening shall apply to any individual or
29 entity that applies, on or after July 1, 1998, for renewal of
30 a license, certificate, or registration that is subject to the
31 background screening required by this act.

1 Section 75. This act shall take effect July 1, 1998.

2

3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 714

6

6 The phrases "a reasonable basis for believing" and "reasonably
7 suspects" are changed to "probable cause to believe"
8 throughout the bill for purposes of the Agency for Health Care
9 Administration deciding which additional individuals may be
10 required to undergo background screening.

9 Managing employees and financial officers of organizations
10 applying for licensure to operate various types of health care
11 facilities are made subject to abuse registry screening.

11 The Department of Elderly Affairs' exemption from home health
12 agency licensure is broadened to all services instead of only
13 personal care services, subject to the administration of a
14 grievance resolution process created in the bill. The
15 exemption pertaining to individuals offering home health
16 services is narrowed to authorize natural persons to offer
17 only personal care services to up to 12 individuals or
18 families in a calendar year and prohibits natural persons from
19 advertising to the public that they offer such services.

16 The home health licensure law is amended to prohibit the
17 transfer of a home health agency license to an immediate
18 family member or member of the transferor's household
19 following conviction, assessment, or exclusion from the
20 Medicare or Medicaid program.

19 The requirements relating to the background screening of
20 various elder care and health care providers regulated by the
21 Department of Elderly Affairs have been reformatted to
22 integrate the requirements into existing statute.

21 Provisions are added to law relating to expiration and renewal
22 and disciplinary actions against adult day care center
23 licenses.

23 Applicants for adult family-care home licensure, unless the
24 facility is a community residential home, are required to
25 submit proof that the home is in compliance with local zoning
26 requirements for the location for which the license is sought.
27 Regulatory authority is provided for disciplinary actions
28 against adult family-care home licensees.

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