CHAPTER 99-144

Committee Substitute for Senate Bill No. 2214

An act relating to persons with developmental disabilities; amending s. 393.062, F.S.; providing legislative intent with respect to the eligibility criteria for intermediate-care facilities for the developmentally disabled; amending s. 393.065, F.S., relating to applications for developmental services; conforming provisions to the transfer of duties to the Department of Children and Family Services; requiring that the Department of Children and Family Services make certain assessments with respect to prospective residents of intermediate-care facilities; amending ss. 393.066, 393.067, F.S.; conforming provisions to the transfer of duties to the Department of Children and Family Services; revising requirements for emergency-management plans; deleting a requirement that the Agency for Health Care Administration establish standards for certain facilities that serve as shelters; amending s. 393.0673, F.S.; increasing the amount of certain administrative fines; amending s. 393.22, F.S.; requiring that when persons with developmental disabilities leave institutional care, a specified amount of funds for the direct costs of providing such care be transferred to fund community services; amending s. 409.906, F.S.; authorizing the Governor to direct the Agency for Health Care Administration to delete an optional Medicaid service pertaining to intermediate-care facilities for the developmentally disabled; revising the requirements for such services provided as an optional Medicaid service; amending s. 409.9127, F.S.; prohibiting conflicts of interest between vendors that provide certain preauthorization and utilization review services and organizations that provide services to disabled persons; requiring the Agency for Health Care Administration to help the Department of Children and Family Services conduct certain assessments; creating part X of chapter 400, F.S., consisting of ss. 400.960-400.968, F.S.; providing definitions; providing requirements for license applications; providing requirements for background screening; providing for provisional licensure; providing for license renewal; authorizing the Agency for Health Care Administration to institute injunctive proceedings to enforce part X of chapter 400, F.S.; providing for personnel screening; specifying grounds under which the agency may take action against a licensee; authorizing the agency to institute receivership proceedings; providing rulemaking authority; providing for the classification of deficiencies; providing for the approval of plans and specifications; providing for certain officers of the agency, the state, and the fire marshal to have a right to enter a licensed facility; providing for a moratorium on admissions to a facility; providing penalties; requiring that the Department of Children and Family Services design a system to provide consumer-directed and choice-based services; providing for pilot programs to test a payment model; requiring a report to the Legislature; providing an effective date.

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

Section 1. Section 393.062, Florida Statutes, is amended to read:

393.062 Legislative findings and declaration of intent.—The Legislature finds and declares that existing state programs for the treatment of individuals who are developmentally disabled, which often unnecessarily place clients in ~~large state~~ institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to a great majority of clients. A redirection in state treatment programs for individuals who are developmentally disabled is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that have the potential to prevent or reduce the severity of developmental disabilities. Further, the Legislature declares that greatest priority shall be given to the development and implementation of community-based residential placements, services, and treatment programs for individuals who are developmentally disabled which will enable such individuals to achieve their greatest potential for independent and productive living, which will enable them to live in their own homes or in residences ~~facilities~~ located in their own communities, and which will permit them ~~clients~~ to be diverted or removed from unnecessary institutional placements. The Legislature finds that the eligibility criteria for intermediate-care facilities for the developmentally disabled which are specified in the Medicaid state plan in effect on the effective date of this act are essential to the system of residential services. The Legislature declares that the goal of this act, to improve the quality of life of all developmentally disabled persons by the development and implementation of community-based residential placements, services, and treatment, cannot be met without ensuring the availability of community residential opportunities for developmentally disabled persons in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians. The Legislature intends that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature declares that, in developing community-based programs and services for individuals who are developmentally disabled, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies. Finally, it is the intent of the Legislature that all caretakers unrelated to individuals with developmental disabilities receiving care shall be of good moral character.

Section 2. Subsection (1) of section 393.065, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

393.065 Application and eligibility determination.—

(1) Application for services shall be made in writing to the Department of Children and Family ~~Health and Rehabilitative~~ Services, in the district in which the applicant resides. Employees of the department's developmental services program shall review each applicant for eligibility within 45

days after ~~of~~ the date the application is signed for children under 6 years of age and within 60 days after ~~of~~ the date the application is signed for all other applicants. When necessary to definitively identify individual conditions or needs, the department shall provide a comprehensive assessment. Only individuals whose domicile is in Florida shall be eligible for services. Information accumulated by other agencies, including professional reports and collateral data, shall be considered in this process when available.

(4) The department shall assess the level of need and medical necessity for prospective residents of intermediate-care facilities for the developmentally disabled after October 1, 1999. The department may enter into an agreement with the Department of Elderly Affairs for its Comprehensive Assessment and Review for Long-Term-Care Services (CARES) program to conduct assessments to determine the level of need and medical necessity for long-term-care services under this chapter. To the extent permissible under federal law, the assessments must be funded under Title XIX of the Social Security Act.

Section 3. Subsection (1) of section 393.066, Florida Statutes, 1998 Supplement, is amended to read:

393.066 Community services and treatment for persons who are developmentally disabled.—

(1) The Department of Children and Family ~~Health and Rehabilitative~~ Services shall plan, develop, organize, and implement its programs of services and treatment for persons who are developmentally disabled along district lines. The goal of such programs shall be to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.

Section 4. Subsections (3), (9), and (10) of section 393.067, Florida Statutes, 1998 Supplement, are amended to read:

393.067 Licensure of residential facilities and comprehensive transitional education programs.—

(3) An application for a license for a residential facility or a comprehensive transitional education program shall be made to the Department of Children and Family ~~Health and Rehabilitative~~ Services on a form furnished by it and shall be accompanied by the appropriate license fee.

(9) The department and the Agency for Health Care Administration, after consultation with the Department of Community Affairs, shall adopt rules for residential facilities under the respective regulatory jurisdiction of each establishing minimum standards for the preparation and annual update of a comprehensive emergency management plan. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan for all comprehensive transitional

education programs ~~intermediate care facilities for the developmentally disabled, facilities serving seven or more people,~~ and for homes serving individuals who have complex medical conditions is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Agency for Health Care Administration, the Department of Children and Family ~~Health and Rehabilitative~~ Services, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

~~(10) The Agency for Health Care Administration shall establish standards for facilities and equipment to increase the extent to which facilities for intermediate care for developmentally disabled persons are structurally capable of serving as shelters and equipped to be self-supporting during and immediately following disasters.~~

Section 5. Subsections (1) and (2) of section 393.0673, Florida Statutes, are amended to read:

393.0673 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedures.—

(1) The Department of Children and Family ~~Health and Rehabilitative~~ Services may deny, revoke, or suspend a license or impose an administrative fine, not to exceed $1,000 ~~$500~~ per violation per day, for a violation of any provision of s. 393.0655 or s. 393.067 or rules adopted ~~promulgated~~ pursuant thereto. All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.

(2) The department, as a part of any final order issued by it under the provisions of this chapter, may impose such fine as it deems proper, except that such fine may not exceed $1,000 ~~$500~~ for each violation. Each day a violation of this chapter occurs constitutes a separate violation and is subject to a separate fine, but in no event may the aggregate amount of any fine exceed $10,000 ~~$5,000~~. Fines paid by any facility licensee under the provisions of this subsection shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

Section 6. Subsection (4) is added to section 393.22, Florida Statutes, to read:

393.22 Transfer of appropriations; barriers to services; financial commitment to programs.—

(4) The Department of Children and Family Services and the Agency for Health Care Administration jointly shall ensure that whenever a number of persons move from an institution serving persons with developmental disabilities which is sufficient to allow an entire residential unit within that

institution to be closed, no less than 80 percent of the direct costs of providing services to persons who had resided in that unit shall be reallocated for community services.

Section 7. Section 409.906, Florida Statutes, 1998 Supplement, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(1) ADULT DENTURE SERVICES.—The agency may pay for dentures, the procedures required to seat dentures, and the repair and reline of dentures, provided by or under the direction of a licensed dentist, for a recipient who is age 21 or older.

(2) ADULT HEALTH SCREENING SERVICES.—The agency may pay for an annual routine physical examination, conducted by or under the direction of a licensed physician, for a recipient age 21 or older, without regard to medical necessity, in order to detect and prevent disease, disability, or other health condition or its progression.

(3) AMBULATORY SURGICAL CENTER SERVICES.—The agency may pay for services provided to a recipient in an ambulatory surgical center licensed under part I of chapter 395, by or under the direction of a licensed physician or dentist.

(4) BIRTH CENTER SERVICES.—The agency may pay for examinations and delivery, recovery, and newborn assessment, and related services, provided in a licensed birth center staffed with licensed physicians, certified nurse midwives, and midwives licensed in accordance with chapter 467, to a recipient expected to experience a low-risk pregnancy and delivery.

(5) CASE MANAGEMENT SERVICES.—The agency may pay for primary care case management services rendered to a recipient pursuant to a federally approved waiver, and targeted case management services for specific groups of targeted recipients, for which funding has been provided and which are rendered pursuant to federal guidelines. The agency is authorized to limit reimbursement for targeted case management services in order to

comply with any limitations or directions provided for in the General Appropriations Act.

(6) CHILDREN'S DENTAL SERVICES.—The agency may pay for diagnostic, preventive, or corrective procedures, including orthodontia in severe cases, provided to a recipient under age 21, by or under the supervision of a licensed dentist. Services provided under this program include treatment of the teeth and associated structures of the oral cavity, as well as treatment of disease, injury, or impairment that may affect the oral or general health of the individual.

(7) CHIROPRACTIC SERVICES.—The agency may pay for manual manipulation of the spine and initial services, screening, and X rays provided to a recipient by a licensed chiropractic physician.

(8) COMMUNITY MENTAL HEALTH SERVICES.—The agency may pay for rehabilitative services provided to a recipient by a mental health or substance abuse provider licensed by the agency and under contract with the agency or the Department of Children and Family Services to provide such services. Those services which are psychiatric in nature shall be rendered or recommended by a psychiatrist, and those services which are medical in nature shall be rendered or recommended by a physician or psychiatrist. The agency must develop a provider enrollment process for community mental health providers which bases provider enrollment on an assessment of service need. The provider enrollment process shall be designed to control costs, prevent fraud and abuse, consider provider expertise and capacity, and assess provider success in managing utilization of care and measuring treatment outcomes. Providers will be selected through a competitive procurement or selective contracting process. In addition to other community mental health providers, the agency shall consider for enrollment mental health programs licensed under chapter 395 and group practices licensed under chapter 458, chapter 459, chapter 490, or chapter 491. The agency is also authorized to continue operation of its behavioral health utilization management program and may develop new services if these actions are necessary to ensure savings from the implementation of the utilization management system. The agency shall coordinate the implementation of this enrollment process with the Department of Children and Family Services and the Department of Juvenile Justice. The agency is authorized to utilize diagnostic criteria in setting reimbursement rates, to preauthorize certain high-cost or highly utilized services, to limit or eliminate coverage for certain services, or to make any other adjustments necessary to comply with any limitations or directions provided for in the General Appropriations Act.

(9) DIALYSIS FACILITY SERVICES.—Subject to specific appropriations being provided for this purpose, the agency may pay a dialysis facility that is approved as a dialysis facility in accordance with Title XVIII of the Social Security Act, for dialysis services that are provided to a Medicaid recipient under the direction of a physician licensed to practice medicine or osteopathic medicine in this state, including dialysis services provided in the recipient's home by a hospital-based or freestanding dialysis facility.

(10) DURABLE MEDICAL EQUIPMENT.—The agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary.

(11) HEALTHY START SERVICES.—The agency may pay for a continuum of risk-appropriate medical and psychosocial services for the Healthy Start program in accordance with a federal waiver. The agency may not implement the federal waiver unless the waiver permits the state to limit enrollment or the amount, duration, and scope of services to ensure that expenditures will not exceed funds appropriated by the Legislature or available from local sources.

(12) HEARING SERVICES.—The agency may pay for hearing and related services, including hearing evaluations, hearing aid devices, dispensing of the hearing aid, and related repairs, if provided to a recipient by a licensed hearing aid specialist, otolaryngologist, otologist, audiologist, or physician.

(13) HOME AND COMMUNITY-BASED SERVICES.—The agency may pay for home-based or community-based services that are rendered to a recipient in accordance with a federally approved waiver program.

(14) HOSPICE CARE SERVICES.—The agency may pay for all reasonable and necessary services for the palliation or management of a recipient's terminal illness, if the services are provided by a hospice that is licensed under part VI of chapter 400 and meets Medicare certification requirements.

(15) INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED SERVICES.—~~For the purposes of Medicaid reimbursement, "intermediate care facility for the developmentally disabled services" means services provided by a facility which is owned and operated by the state and to which~~ The agency may pay for health-related care and services provided on a 24-hour-a-day basis by a facility licensed and certified as a Medicaid Intermediate Care Facility for the Developmentally Disabled, for a recipient who needs such care because of a developmental disability ~~or related condition~~.

(16) INTERMEDIATE CARE SERVICES.—The agency may pay for 24-hour-a-day intermediate care nursing and rehabilitation services rendered to a recipient in a nursing facility licensed under part II of chapter 400, if the services are ordered by and provided under the direction of a physician.

(17) OPTOMETRIC SERVICES.—The agency may pay for services provided to a recipient, including examination, diagnosis, treatment, and management, related to ocular pathology, if the services are provided by a licensed optometrist or physician.

(18) PHYSICIAN ASSISTANT SERVICES.—The agency may pay for all services provided to a recipient by a physician assistant licensed under s. 458.347 or s. 459.022. Reimbursement for such services must be not less than 80 percent of the reimbursement that would be paid to a physician who provided the same services.

(19) PODIATRIC SERVICES.—The agency may pay for services, including diagnosis and medical, surgical, palliative, and mechanical treatment, related to ailments of the human foot and lower leg, if provided to a recipient by a podiatric physician licensed under state law.

(20) PRESCRIBED DRUG SERVICES.—The agency may pay for medications that are prescribed for a recipient by a physician or other licensed practitioner of the healing arts authorized to prescribe medications and that are dispensed to the recipient by a licensed pharmacist or physician in accordance with applicable state and federal law.

(21) REGISTERED NURSE FIRST ASSISTANT SERVICES.—The agency may pay for all services provided to a recipient by a registered nurse first assistant as described in s. 464.027. Reimbursement for such services may not be less than 80 percent of the reimbursement that would be paid to a physician providing the same services.

(22) STATE HOSPITAL SERVICES.—The agency may pay for all-inclusive psychiatric inpatient hospital care provided to a recipient age 65 or older in a state mental hospital.

(23) VISUAL SERVICES.—The agency may pay for visual examinations, eyeglasses, and eyeglass repairs for a recipient, if they are prescribed by a licensed physician specializing in diseases of the eye or by a licensed optometrist.

Section 8. Section 409.9127, Florida Statutes, is amended to read:

409.9127 Preauthorization and concurrent utilization review; conflict-of-interest standards.—

(1) The Agency for Health Care Administration shall be solely responsible for developing and enforcing standards to prohibit financial and other conflicts of interest among vendors selected to provide preauthorization and concurrent utilization review management with direct-service organizations providing ~~alcohol,~~ substance abuse, mental health, or related services to clients or services to disabled persons who have services authorized through the preauthorization and concurrent utilization review management system established to achieve cost savings in the provision of ~~alcohol,~~ substance abuse, mental health, or related services or services to disabled persons. The agency may require the posting of a surety bond to guarantee that no financial or other conflicts of interest exist or will exist among vendors selected to provide preauthorization and concurrent utilization review management services.

(2) Vendors selected to conduct preauthorization or concurrent utilization review management, or both, may be peer-review organizations, qualified licensed clinical practitioners, or public or private organizations that demonstrate the ability to conduct such reviews according to criteria developed by the agency and that have no financial or other conflict of interest with any direct-service organization providing ~~alcohol,~~ substance abuse, mental health, or related services or services to disabled persons. Selection of vendors shall be accomplished through a competitive process.

(3) The agency shall help the Department of Children and Family Services meet the requirements of s. 393.065(4). Only admissions approved pursuant to such assessments are eligible for reimbursement under this chapter.

Section 9. Part X of chapter 400, Florida Statutes, consisting of sections 400.960, 400.962, 400.963, 400.964, 400.965, 400.966, 400.967, and 400.968, Florida Statutes, is created to read:

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

(1) "Active treatment" means the provision of services by an interdisciplinary team which are necessary to maximize a client's individual independence or prevent regression or loss of functional status.

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

(3) "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(4) "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain occurring before, during, or after birth and resulting in the loss or impairment of control over voluntary muscles. The term does not include those symptoms or impairments resulting solely from a stroke.

(5) "Client" means any person determined by the department to be eligible for developmental services.

(6) "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this part in which the client or his or her family has the right or duty to participate.

(7) "Department" means the Department of Children and Family Services.

(8) "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(9) "Direct service provider" means a person 18 years of age or older who has direct contact with individuals with developmental disabilities and who is unrelated to the individuals with developmental disabilities.

(10) "Epilepsy" means a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons. When found concurrently with retardation, autism, or cerebral palsy, epilepsy is considered a secondary disability for which the client is eligible to receive services to ameliorate this condition according to the provisions of this part.

(11) "Guardian advocate" means a person appointed by the circuit court to represent a person with developmental disabilities in any proceedings

brought pursuant to s. 393.12, and is distinct from a guardian advocate for mentally ill persons under chapter 394.

(12) "Intermediate care facility for the developmentally disabled" means a residential facility licensed and certified in accordance with state law, and certified by the Federal Government, pursuant to the Social Security Act, as a provider of Medicaid services to persons who are developmentally disabled.

(13) "Prader-Willi syndrome" means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia, or an excessive drive to eat which leads to obesity, usually at 18 to 36 months of age, mild to moderate retardation, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(14) "Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in rules of the department. "Deficits in adaptive behavior," for the purpose of this definition, means deficits in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(15) "Spina bifida" means a medical diagnosis of spina bifida cystica or myelomeningocele.

400.962 License required; license application.—

(1) It is unlawful to operate an intermediate-care facility for the developmentally disabled or a comprehensive transitional educational program without a license.

(2) Separate licenses are required for facilities maintained on separate premises even if operated under the same management. However, a separate license is not required for separate buildings on the same grounds.

(3) The basic license fee collected shall be deposited in the Health Care Trust Fund, established for carrying out the purposes of this chapter.

(4) The license must be conspicuously displayed inside the facility.

(5) A license is valid only in the hands of the individual, firm, partnership, association, or corporation to whom it is issued. A license is not valid for any premises other than those for which it was originally issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily.

(6) An application for a license shall be made to the agency on forms furnished by it and must be accompanied by the appropriate license fee.

(7) The application must be under oath and must contain the following:

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

(b) The name of any person whose name is required on the application under paragraph (a) and who owns at least a 10-percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.

(c) The location of the facility for which a license is sought and an indication that such location conforms to the local zoning ordinances.

(d) The name of the persons under whose management or supervision the facility will be operated.

(e) The total number of beds.

(8) The applicant must demonstrate that sufficient numbers of staff, qualified by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

(9) The applicant must submit evidence that establishes the good moral character of the applicant, manager, supervisor, and administrator. An applicant who is an individual or a member of a board of directors or officer of an applicant that is a firm, partnership, association, or corporation must not have been convicted, or found guilty, regardless of adjudication, of a crime in any jurisdiction which affects or may potentially affect residents in the facility.

(10)(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term “applicant” means the facility administrator, or similarly titled individual who is responsible for the day-to-day operation of the licensed facility, and the facility financial officer, or similarly titled individual who is responsible for the financial operation of the licensed facility.

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

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other licensure requirements under this chapter

satisfies the requirements of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Department of Insurance under chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community satisfies the requirements for the Department of Law Enforcement and Federal Bureau of Investigation background checks.

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been granted by the agency as set forth in chapter 435.

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

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

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

(11) The applicant must furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part and all rules adopted under this part, and the agency shall establish standards for this purpose.

400.963 Injunctive proceedings.—The Agency for Health Care Administration may seek a temporary or permanent injunction to:

(1) Enforce the provisions of this part or any standard, rule, or order issued or entered under this part; or

(2) Terminate the operation of a facility licensed under this part when the facility:

(a) Fails to take preventative or corrective measures in accordance with any order of the agency.

(b) Fails to abide by any final order of the agency.

(c) Commits any violation creating an emergency requiring immediate action.

(3) Terminate the operation of a provider of supports or services who has willfully and knowingly refused to comply with the screening requirement for direct service providers or has refused to terminate direct service providers found not to be in compliance with the requirements for good moral character.

400.964 Personnel screening requirement.—

(1) The agency shall require level 2 background screening as provided in chapter 435 for all employees or prospective employees of facilities licensed under this part who are expected to be, or whose responsibilities are such that they would be considered to be, a direct service provider.

(2) Employers and employees shall comply with the requirements of chapter 435.

(3) Applicants and employees shall be excluded from employment pursuant to s. 435.06

(4) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening and the abuse registry check must be submitted to the agency as prescribed by the agency.

(5) Notwithstanding any other provision of law, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening are not required to be rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity that caused such screening to be performed.

(6) The agency may adopt rules to administer this section.

(7) All employees must comply with the requirements of this section by October 1, 2000. A person employed by a facility licensed pursuant to this part as of the effective date of this act is not required to submit to rescreening if the facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03(1). Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement must provide to the employing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1999, must comply with the requirements of this section.

(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arises against an employer that, upon notice of a disqualifying offense listed under chapter 435 or a confirmed report of abuse, neglect, or exploitation or an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.

400.965 Action by agency against licensee; grounds.—

(1) Any of the following conditions constitute grounds for action by the agency against a licensee:

(a) A misrepresentation of a material fact in the application;

(b) The commission of an intentional or negligent act materially affecting the health or safety of residents of the facility;

(c) A violation of any provision of this part or rules adopted under this part; or

(d) The commission of any act constituting a ground upon which application for a license may be denied.

(2) If the agency has a reasonable belief that any of such conditions exists, it shall:

(a) In the case of an applicant for original licensure, deny the application.

(b) In the case of an applicant for relicensure or a current licensee, take administrative action as provided in s. 400.968 or injunctive action as authorized by s. 400.963.

(c) In the case of a facility operating without a license, take injunctive action as authorized in s. 400.963.

400.966 Receivership proceeding.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for an intermediate-care facility for the develop-

mentally disabled which is owned and operated by a corporation or partnership when:

(a) Any person is operating the facility without a license and refuses to apply for a license.

(b) The licensee is closing the facility or has informed the agency that it intends to close the facility, and adequate arrangements have not been made to relocate the residents within 7 days, exclusive of weekends and holidays, after the closing of the facility.

(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this part and all rules adopted under this part.

(2)(a) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, has priority.

(3) A hearing must be conducted within 5 days after the filing of the petition, at which time all interested parties must be given the opportunity to present evidence pertaining to the petition. The agency shall notify the owner or operator of the facility named in the petition of its filing and the date set for the hearing.

(4) The court shall grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed ex parte unless the court determines that any of the conditions listed in subsection (1) exist; that the facility owner or operator cannot be found; that all reasonable means of locating the owner or operator and notifying him or her of the petition and hearing have been exhausted; or that the owner or operator after notification of the hearing chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of receiver pursuant to this section, except that the court may not appoint any owner or affiliate of the facility that is in receivership. Before the appointment as receiver of a person who is the operator, manager, or supervisor of another facility, the court must determine that the person can reasonably operate, manage, or supervise more than one facility. The receiver may be appointed for up to 90 days, with the option of petitioning the court for 30-day extensions. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency and presented to the court with each petition for receivership. Under no circumstances may

the agency or designated agency employee be appointed as a receiver for more than 60 days; however, the agency receiver may petition the court for 30-day extensions. The court shall grant an extension upon a showing of good cause. The agency may petition the court to appoint a substitute receiver.

(5) During the first 60 days of the receivership, the agency may not take action to decertify or revoke the license of a facility unless conditions causing imminent danger to the health and welfare of the residents exist and a receiver has been unable to remove those conditions. After the first 60 days of receivership, and every 60 days thereafter until the receivership is terminated, the agency shall submit to the court the results of an assessment of the ability of the facility to assure the safety and care of the residents. If the conditions at the facility or the intentions of the owner indicate that the purpose of the receivership is to close the facility rather than to facilitate its continued operation, the agency shall place the residents in appropriate alternative residential settings as quickly as possible. If, in the opinion of the court, the agency has not been diligent in its efforts to make adequate arrangements for placement, the court shall find the agency to be in contempt and shall order the agency to submit its plans for moving the residents.

(6) The receiver shall provide for the continued health, safety, and welfare of all residents of the facility and:

(a) Shall exercise those powers and perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure the residents' safety and adequate health care for the residents.

(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments that, in the case of a rental agreement, are for the use of the property during the period of the receivership or that, in the case of a purchase agreement, become due during the period of the receivership.

(e) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owner at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private, paying residents. The receiver may apply to the agency for a rate increase for residents under Title XIX of the Social

Security Act if the facility is not receiving the state reimbursement cap and if expenditures justify an increase in the rate.

(f) May correct or eliminate any deficiency in the structure, furnishings, or staffing of the facility which endangers the safety or health or residents while they remain in the facility, provided that the total cost of correction does not exceed $3,000. The court may order expenditures for this purpose in excess of $3,000 on application from the receiver after notice to the owner. A hearing may be requested by the owner within 72 hours.

(g) May let contracts and hire agents and employees to carry out the powers and duties of the receiver under this section.

(h) Shall have full power to direct, manage, hire, and discharge employees of the facility subject to any contract rights they may have. The receiver shall hire and pay employees at the rate of compensation, including benefits, approved by the court. Receivership does not relieve the owner of any obligations to employees which had been made before the appointment of a receiver and were not carried out by the receiver.

(i) Shall be entitled to take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all such property or assets and all resident records of which the receiver takes possession; and he or she shall provide for the prompt transfer of the property, assets, and records of any resident transferred to the resident's new placement. An inventory list certified by the owner and receiver must be made when the receiver takes possession of the facility.

(7)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services had they been supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by paragraph (a).

(c) A payment to the receiver of any sum owned to the facility or its owner discharges any obligation to the facility to the extent of the payment.

(8)(a) A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known persons who own the property involved or to the mortgage holders at least 10 days prior to the hearing. The payment by the receiver of the amount determined by the court to be reasonable is a defense to any action brought against the receiver by any person who received such notice, which action is for payment or for possession of the goods or real estate subject to the lease, mortgage, or security interest involved; but the payment does not relieve the owner of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease, mortgage, or security interest involved.

(9) The court shall set the compensation of the receiver, which shall be considered a necessary expense of the receivership.

(10) The court may require a receiver to post a bond.

(11) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty.

(12) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist; or

(b) All of the residents in the facility have been transferred or discharged.

(13) Within 30 days after termination of the receivership, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(14) This section does not relieve any owner, operator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee before the appointment of a receiver, and this section does not suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to the approval of the court that ordered the receivership. A receivership imposed under this section is subject to the Resident Protection Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court is liable for all expenses and costs incurred by the Resident Protection Trust Fund which occur as a result of the receivership.

400.967 Rules and classification of deficiencies.—

(1) It is the intent of the Legislature that rules adopted and enforced under this part include criteria by which a reasonable and consistent quality of resident care may be ensured, the results of such resident care can be demonstrated, and safe and sanitary facilities can be provided.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Children and Family Services and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part, which shall include reasonable and fair criteria governing:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions that will ensure the health, safety, and comfort of residents. The agency shall establish standards for facilities and equipment to increase the extent to which new facilities and a new wing or floor added to an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The Agency for Health Care Administration shall work with facilities licensed under this part and report to the Governor and the Legislature by April 1, 2000, its recommendations for cost-effective renovation standards to be applied to existing facilities. In making such rules, the agency shall be guided by criteria recommended by nationally recognized, reputable professional groups and associations having knowledge concerning such subject matters. The agency shall update or revise such criteria as the need arises. All facilities must comply with those lifesafety code requirements and building code standards applicable at the time of approval of their construction plans. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The agency shall adopt fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical nursing, and other personnel, having responsibility for any part of the care given to residents.

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

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

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum

criteria for the plan after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

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

(3) The agency shall adopt rules to provide that, when the criteria established under subsection (2) are not met, such deficiencies shall be classified according to the nature of the deficiency. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those which the agency determines present and imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a class I violation must be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. Notwithstanding s 400.121(2), a class I deficiency is subject to a civil penalty in an amount not less than $5,000 and not exceeding $10,000 for each deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of the facility residents, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than $1,000 and not exceeding $5,000 for each deficiency. A citation for a class II deficiency shall specify the time within which the deficiency must be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the agency determines to have an indirect or potential relationship to the health, safety, or security of the facility residents, other than class I or class II deficiencies. A class III deficiency is subject to a civil penalty of not less than $500 and not exceeding $1,000 for each deficiency. A citation for a class III deficiency shall specify the time within which the deficiency must be corrected. If a class III deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(4) Civil penalties paid by any licensee under subsection (3) shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(5) The agency shall approve or disapprove the plans and specifications within 60 days after receipt of the final plans and specifications. The agency may be granted one 15-day extension for the review period, if the director of the agency so approves. If the agency fails to act within the specified time, it is deemed to have approved the plans and specifications. When the agency disapproves plans and specifications, it must set forth in writing the reasons for disapproval. Conferences and consultations may be provided as necessary.

(6) The agency may charge an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for the portion of the review which encompasses initial review through the initial revised construction document review. The agency may collect its actual costs on all subsequent portions of the review and construction inspections. Initial fee payment must accompany the initial submission of plans and specification. Any subsequent payment that is due is payable upon receipt of the invoice from the agency. Notwithstanding any other provision of law, all money received by the agency under this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

400.968 Right of entry; protection of health, safety, and welfare.—

(1) Any designated officer or employee of the agency, of the state, or of the local fire marshal may enter unannounced the premises of any facility licensed under this part in order to determine the state of compliance with this part and the rules or standards in force under this part. The right of entry and inspection also extends to any premises that the agency has reason to believe are being operated or maintained as a facility without a license; but such an entry or inspection may not be made without the permission of the owner or person in charge of the facility unless a warrant that authorizes the entry is first obtained from the circuit court. The warrant requirement extends only to a facility that the agency has reason to believe is being operated or maintained as a facility without a license. An application for a license or renewal thereof which is made under this section constitutes permission for, and acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. A current valid license constitutes unconditional permission for, and acquiescence in, any entry or inspection of the premises by authorized personnel. The agency retains the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before the facility is entered, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours.

(2) The agency may institute injunctive proceedings in a court of competent jurisdiction for temporary or permanent relief to:

(a) Enforce this section or any minimum standard, rule, or order issued pursuant thereto if the agency's effort to correct a violation through administrative fines has failed or when the violation materially affects the health, safety, or welfare of residents; or

(b) Terminate the operation of a facility if a violation of this section or of any standard or rule adopted pursuant thereto exists which materially affects the health, safety, or welfare of residents.

The Legislature recognizes that, in some instances, action is necessary to protect residents of facilities from immediately life-threatening situations. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, shall enjoin operation of the facility.

(3) The agency may impose an immediate moratorium on admissions to a facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility. If a facility's license is denied, revoked, or suspended, the facility may be subject to the immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.

(4)(a) A violation of any provision of this section or rules adopted by the agency under this section is punishable by payment of an administrative or civil penalty not to exceed $5,000.

(b) A violation of this section or of rules adopted under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is a separate offense.

Section 10. From the lump sum appropriated for developmental services in the 1999-2000 General Appropriations Act, the Department of Children and Family Services shall design a system of providing services for persons with developmental disabilities which provides a consumer-directed, choice-based system. The department shall institute at least one, but not more than three, differently structured pilot programs to test a payment model in which the consumer controls the money that is available for his or her care. The department shall report its progress under this section to the appropriate legislative committees by December 1, 2000, and December 1, 2001. This section is repealed July 1, 2002, and shall be reviewed by the Legislature prior to that date.

Section 11. This act shall take effect upon becoming a law.

Approved by the Governor May 7, 1999.

Filed in Office Secretary of State May 7, 1999.