

Committee Substitute for  
Committee Substitute for House Bill No. 591

An act relating to health care; amending s. 400.408, F.S.; requiring field offices of the Agency for Health Care Administration to establish local coordinating workgroups to identify the operation of unlicensed assisted living facilities and to develop a plan to enforce state laws relating to unlicensed assisted living facilities; requiring a report to the agency of the workgroup's findings and recommendations; requiring health care practitioners to report known operations of unlicensed facilities; prohibiting hospitals and community mental health centers from discharging a patient or client to an unlicensed facility; amending s. 415.1034, F.S.; requiring paramedics and emergency medical technicians to report acts of abuse committed against a disabled adult or elderly person; amending s. 400.471, F.S.; deleting the certificate-of-need requirement for licensure of Medicare-certified home health agencies; amending s. 408.032, F.S.; adding definitions of "exemption" and "mental health services"; revising the term "health service"; deleting the definitions of "home health agency," "institutional health service," "intermediate care facility," "multifacility project," and "respite care"; amending s. 408.033, F.S.; deleting references to the state health plan; amending s. 408.034, F.S.; deleting a reference to licensing of home health agencies by the Agency for Health Care Administration; amending s. 408.035, F.S.; deleting obsolete certificate-of-need review criteria and revising other criteria; amending s. 408.036, F.S.; revising provisions relating to projects subject to review; deleting references to Medicare-certified home health agencies; deleting the review of certain acquisitions; specifying the types of bed increases subject to review; deleting cost overruns from review; deleting review of combinations or division of nursing home certificates of need; providing for expedited review of certain conversions of licensed hospital beds; deleting the requirement for an exemption for initiation or expansion of obstetric services, provision of respite care services, establishment of a Medicare-certified home health agency, or provision of a health service exclusively on an outpatient basis; providing exemptions for combinations or divisions of nursing home certificates of need and additions of certain hospital beds and nursing home beds within specified limitations; requiring a fee for each request for exemption; amending s. 408.037, F.S.; deleting reference to the state health plan; amending ss. 408.038, 408.039, 408.044, and 408.045, F.S.; replacing "department" with "agency"; clarifying the opportunity to challenge an intended award of a certificate of need; amending s. 408.040, F.S.; deleting an obsolete reference; revising the format of conditions related to Medicaid; creating a certificate-of-need workgroup within the Agency for Health Care Administration; providing for expenses; providing membership, duties, and meetings; providing for termination; amending s. 651.118, F.S.; excluding a specified number of beds from a time limit imposed on extension of authoriza-

tion for continuing care residential community providers to use sheltered beds for nonresidents; requiring a facility to report such use after the expiration of the extension; repealing s. 400.464(3), F.S., relating to home health agency licenses provided to certificate-of-need exempt entities; providing applicability; providing an appropriation for continued review of clinical laboratory services for kidney dialysis patients and requiring a report thereon; amending s. 455.564, F.S.; revising general licensing provisions for professions under the jurisdiction of the Department of Health; providing for processing of applications from foreign or nonresident applicants not yet having a social security number; providing for temporary licensure of such applicants; revising provisions relating to ongoing criminal investigations or prosecutions; requiring proof of restoration of civil rights under certain circumstances; authorizing requirement for personal appearance prior to grant or denial of a license; providing for tolling of application decision deadlines under certain circumstances; amending s. 455.565, F.S.; eliminating duplicative submission of fingerprints and other information required for criminal history checks; providing for certain access to criminal history information through the department's health care practitioner credentialing system; amending s. 455.5651, F.S.; authorizing the department to publish certain information in practitioner profiles; amending s. 455.5653, F.S.; deleting obsolete language relating to scheduling and development of practitioner profiles for additional health care practitioners; providing the department access to information on health care practitioners maintained by the Agency for Health Care Administration for corroboration purposes; amending s. 455.5654, F.S.; providing for adoption by rule of a form for submission of profiling information; amending s. 455.567, F.S.; expanding the prohibition against sexual misconduct to cover violations against guardians and representatives of patients or clients; providing penalties; amending s. 455.624, F.S.; revising and providing grounds for disciplinary action relating to having a license to practice a regulated health care profession acted against, sexual misconduct, inability to practice properly due to alcohol or substance abuse or a mental or physical condition, and testing positive for a drug without a lawful prescription therefor; providing for restriction of license as a disciplinary action; providing for issuance of a citation and assessment of a fine for certain first-time violations; reenacting ss. 455.577, 455.631, 455.651(2), 455.712(1), 458.347(7)(g), 459.022(7)(f), 468.1755(1)(a), 468.719(1)(a) and (2), 468.811, and 484.056(1)(a), F.S., relating to theft or reproduction of an examination, giving false information, disclosure of confidential information, business establishments providing regulated services without an active status license, and practice violations by physician assistants, nursing home administrators, athletic trainers, orthotists, prosthetists, pedorthists, and hearing aid specialists, to incorporate the amendment to s. 455.624, F.S., in references thereto; repealing s. 455.704, F.S., relating to the Impaired Practitioners Committee; amending s. 455.707, F.S., relating to impaired practitioners, to conform; clarifying provisions relating to complaints against im-

paired practitioners; amending s. 310.102, F.S.; revising and removing references, to conform; amending s. 455.711, F.S.; revising provisions relating to active and inactive status licensure; eliminating reference to delinquency as a licensure status; providing rulemaking authority; amending ss. 455.587 and 455.714, F.S.; revising references, to conform; creating s. 455.719, F.S.; providing that the appropriate medical regulatory board, or the department when there is no board, has exclusive authority to grant exemptions from disqualification from employment or contracting with respect to persons under the licensing jurisdiction of that board or the department, as applicable; amending s. 455.637, F.S.; revising provisions relating to sanctions against the unlicensed practice of a health care profession; providing legislative intent; revising and expanding provisions relating to civil and administrative remedies; providing criminal penalties; incorporating and modifying the substance of current provisions that impose a fee to combat unlicensed activity and provide for disposition of the proceeds thereof; providing statutory construction relating to dietary supplements; reenacting ss. 458.327, 459.013, 460.411, 461.012, 462.17, 463.015, 464.016, 465.015, 466.026, 467.201, 468.366, 483.828, 483.901, 484.053, F.S.; providing penalties; creating s. 458.3135, F.S.; providing for temporary certification for visiting physicians to practice in approved cancer centers; providing certification requirements; providing fees; providing for approval of cancer centers and annual review of such approval; providing practice limitations and conditions; limiting the number of certificates that may be issued; providing rulemaking authority; amending s. 458.3145, F.S.; adding medical schools to list of programs at which medical faculty certificateholders may practice; amending s. 458.315, F.S.; waiving application and licensure fees for physicians obtaining a temporary certificate to practice in areas of critical need when such practice is limited to volunteer, uncompensated care for low-income persons; amending ss. 458.345 and 459.021, F.S.; providing for registration of persons desiring to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training in a statutory teaching hospital; providing requirements; providing fees; providing penalties; providing rulemaking authority; amending s. 458.348, F.S.; requiring protocols to contain specified requirements; amending s. 458.347, F.S.; providing authority to the Council on Physician Assistants to refuse to certify an applicant for licensure or place restrictions or conditions on license; amending s. 459.022, F.S.; providing authority to the Council on Physician Assistants to refuse to certify an applicant for licensure or place restrictions or conditions on license; providing applicability; repealing s. 455.641, F.S., relating to unlicensed activity fees, to conform; reenacting ss. 455.574(1)(d), 468.1295(1), 484.014(1), and 484.056(1), F.S., relating to violation of security provisions for examinations and violations involving speech-language pathology, audiology, opticianry, and the dispensing of hearing aids, to incorporate the amendment to s. 455.637, F.S., in references thereto; amending s. 921.0022, F.S.; modifying the criminal offense severity ranking chart to add or increase the level of

various offenses relating to the practice of a health care profession, the practice of medicine, osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathy, optometry, nursing, pharmacy, dentistry, dental hygiene, midwifery, respiratory therapy, and medical physics, practicing as clinical laboratory personnel, and the dispensing of hearing aids; amending s. 457.102, F.S.; revising the definition of "acupuncture"; amending s. 457.105, F.S.; revising licensure qualifications to practice acupuncture; amending s. 457.107, F.S.; modifying the fee for renewal of a license to practice acupuncture; amending s. 483.824, F.S.; revising qualifications of clinical laboratory directors; designating Florida Alzheimer's Disease Day; amending s. 641.51, F.S.; providing for referral to ophthalmologist under certain circumstances; providing that the act not be construed to prohibit certain uses of the Internet; providing that certain funds appropriated to conduct a review of current mandated health coverages revert to the fund from which appropriated and that the review may not be conducted; abrogating certain exemptions from s. 408.036(1), F.S., which are enacted in the 2000 Regular Session; amending s. 627.6699, F.S.; modifying definitions; requiring small employer carriers to begin to offer and issue all small employer benefit plans on a specified date; deleting the requirement that basic and standard small employer health benefit plans be issued; providing additional requirements for determining premium rates for benefit plans; providing for applicability of the act to plans provided by small employer carriers that are insurers or health maintenance organizations notwithstanding the provisions of certain other specified statutes under specified conditions; amending s. 641.201, F.S.; clarifying applicability of the Florida Insurance Code to health maintenance organizations; amending s. 641.234, F.S.; providing conditions under which the Department of Insurance may order a health maintenance organization to cancel a contract; amending s. 641.27, F.S.; providing for payment by a health maintenance organization of fees to outside examiners appointed by the Department of Insurance; creating s. 641.226, F.S.; providing for application of federal solvency requirements to provider-sponsored organizations; creating s. 641.39, F.S.; prohibiting the solicitation or acceptance of contracts by insolvent or impaired health maintenance organizations; providing a criminal penalty; creating s. 641.2011, F.S.; providing that part IV of chapter 628, F.S., applies to health maintenance organizations; making an appropriation for the purpose of reviewing proposed mandated health coverages; amending s. 212.055, F.S.; expanding the authorized use of the indigent care surtax to include trauma centers; renaming the surtax; requiring the plan set out in the ordinance to include additional provisions concerning Level I trauma centers; providing requirements for annual disbursements to hospitals on October 1 to be in recognition of the Level I trauma center status and to be in addition to a base contract amount, plus any negotiated additions to indigent care funding; authorizing funds received to be used to generate federal matching funds under certain conditions and authorizing payment by the clerk of the court; amending part XV of chapter 468, F.S.,

relating to certified nursing assistants, and transferring that part to chapter 464, F.S., relating to nursing, to transfer from the Department of Health to the Board of Nursing responsibility and rulemaking authority for regulation of certified nursing assistants; changing requirements for nursing assistants; transferring from the Department of Education to the board responsibility for approval of training programs; revising grounds for which the board may impose certain penalties; creating s. 464.2085, F.S.; creating and providing requirements for a Council on Certified Nursing Assistants; amending ss. 20.43, 39.01, 39.304, 110.131, 232.46, 240.4075, 246.081, 310.102, 381.0302, 384.30, 384.31, 394.455, 395.0191, 400.021, 400.211, 400.402, 400.407, 400.4255, 400.426, 400.462, 400.464, 400.506, 400.6105, 401.23, 401.252, 408.706, 409.908, 415.1085, 455.597, 455.604, 455.667, 455.677, 455.694, 455.707, 458.348, 464.001, 464.002, 464.003, 464.006, 464.009, 464.016, 464.018, 464.019, 464.022, 464.023, 464.027, 466.003, 467.003, 467.0125, 467.203, 468.505, 483.041, 483.801, 491.0112, 550.24055, 627.351, 627.357, 627.9404, 641.31, 766.101, 766.110, 766.1115, 877.111, 945.602, 960.28, 984.03, 985.03, F.S.; conforming references; revising application procedures for certified nursing assistants; revising registration requirements for certified nursing assistants; amending ss. 400.215, 400.512, F.S.; revising provisions relating to the granting of exemptions from disqualification for employment in nursing homes or home health agencies; amending s. 400.23, F.S.; authorizing licensed practical nurses in nursing home facilities to supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel working in such facilities in accordance with rules adopted by the Board of Nursing; amending s. 455.557, F.S.; including advanced registered nurse practitioners under the credentialing program; creating s. 455.56503, F.S.; requiring advanced registered nurse practitioners to submit information and fingerprints for profiling purposes; amending s. 455.5651, F.S.; authorizing the department to publish certain information in practitioner profiles; amending s. 455.5653, F.S.; deleting obsolete provisions relating to scheduling and development of practitioner profiles for additional health care practitioners; providing access to information on advanced registered nurse practitioners maintained by the Agency for Health Care Administration for corroboration purposes; amending s. 455.5654, F.S.; providing for adoption by rule of a form for submission of profiling information; repealing s. 400.462(20), F.S., to delete the definition of "screening" under the Home Health Services Act; amending s. 400.471, F.S.; providing for an abuse registry background check through the Agency for Health Care Administration; amending s. 400.484, F.S.; providing for assessment of certain costs of an investigation that results in a successful prosecution; amending s. 400.487, F.S.; requiring home health service agreements; revising requirements for physician's treatment orders; providing for supervisory visits by a registered nurse under certain circumstances; deleting provisions relating to service provision plans; amending s. 400.497, F.S.; providing for a home health aide competency test, criteria for the frequency of onsite licensure surveys, and information to be included in patients' records; amending

s. 400.506, F.S.; providing for an abuse registry background check through the Agency for Health Care Administration; authorizing assessment of certain costs of an investigation that results in a successful prosecution; revising a cross reference; making renewal of license contingent on payment or arrangement for payment of any unpaid assessment; amending s. 400.509, F.S.; providing for an abuse registry background check through the Agency for Health Care Administration; authorizing assessment of certain costs of an investigation that results in a successful prosecution; making renewal of registration contingent on payment or arrangement for payment of any unpaid assessment; amending s. 400.512, F.S.; revising provisions relating to the screening of home health agency, nurse registry, and companion and homemaker service personnel; requiring the Agency for Health Care Administration to conduct the search for reports of confirmed abuse; providing an exemption from liability under certain conditions for providing opinions on the job performance of former employees and contract workers; providing conforming changes; amending s. 455.587, F.S.; providing requirements for funding regulation of professions by the Department of Health; providing an appropriation; amending s. 766.106, F.S.; providing that following the initiation of a suit alleging medical malpractice the claimant must provide notice to the Department of Health along with a copy of the service of process; requiring the Agency for Health Care Administration to conduct a study regarding implementation of the federal "Ticket to Work and Work Incentives Act of 1999" in the state and report to the Legislature; amending s. 240.241, F.S.; providing for retention of sponsored-research overhead; authorizing the Agency for Health Care Administration to offer specialty prepaid health plans to Medicaid recipients with HIV or AIDS; providing conditions; requiring a report to the Legislature; providing effective dates.

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

Section 1. Subsections (1) and (2) of section 400.408, Florida Statutes, are amended to read:

400.408 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties; verification of licensure status.—

(1)(a) It is unlawful to own, operate, or maintain an assisted living facility without obtaining a license under this part.

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

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

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

(e) Any facility that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to s. 400.419.

(f) When a licensee has an interest in more than one assisted living facility, and fails to license any one of these facilities, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to s. 400.419, on any or all of the licensed facilities until such time as the unlicensed facility is licensed or ceases operation.

(g) If the agency determines that an owner is operating or maintaining an assisted living facility without obtaining a license and determines that a condition exists in the facility that poses a threat to the health, safety, or welfare of a resident of the facility, the owner is subject to the same actions and fines imposed against a licensed facility as specified in ss. 400.414 and 400.419.

(h) Any person aware of the operation of an unlicensed assisted living facility must report that facility to the agency. The agency shall provide to the department's elder information and referral providers a list, by county, of licensed assisted living facilities, to assist persons who are considering an assisted living facility placement in locating a licensed facility.

(i) Each field office of the Agency for Health Care Administration shall establish a local coordinating workgroup which includes representatives of local law enforcement agencies, state attorneys, local fire authorities, the Department of Children and Family Services, the district long-term care ombudsman council, and the district human rights advocacy committee to assist in identifying the operation of unlicensed facilities and to develop and implement a plan to ensure effective enforcement of state laws relating to such facilities. The workgroup shall report its findings, actions, and recommendations semi-annually to the Director of Health Facility Regulation of the agency.

(2) It is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility; to an assisted living facility the license of which is under denial or has been suspended or revoked; or to an assisted living facility that has a moratorium on admissions. Any person who violates this subsection commits a noncriminal violation, punishable by a fine not exceeding \$500 as provided in s. 775.083.

(a) Any health care practitioner, as defined in s. 455.501, which is aware of the operation of an unlicensed facility shall report that facility to the agency. Failure to report a facility that the practitioner knows or has reasonable cause to suspect is unlicensed shall be reported to the practitioner's licensing board.

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

~~(c)~~(a) Any employee of the agency or department, or the Department of Children and Family Services, who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium on admissions is subject to disciplinary action by the agency or department, or the Department of Children and Family Services.

~~(d)~~(b) The employer of any person who is under contract with the agency or department, or the Department of Children and Family Services, and who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium on admissions shall be fined and required to prepare a corrective action plan designed to prevent such referrals.

~~(e)~~(c) The agency shall provide the department and the Department of Children and Family Services with a list of licensed facilities within each county and shall update the list at least quarterly.

~~(f)~~(d) At least annually, the agency shall notify, in appropriate trade publications, physicians licensed under chapter 458 or chapter 459, hospitals licensed under chapter 395, nursing home facilities licensed under part II of this chapter, and employees of the agency or the department, or the Department of Children and Family Services, who are responsible for referring persons for residency, that it is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility and shall notify them of the penalty for violating such prohibition. The department and the Department of Children and Family Services shall, in turn, notify service providers under contract to the respective departments who have responsibility for resident referrals to facilities. Further, the notice must direct each noticed facility and individual to contact the appropriate agency office in order to verify the licensure status of any facility prior to referring any person for residency. Each notice must include the name, telephone number, and mailing address of the appropriate office to contact.

Section 2. Subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of disabled adults or elderly persons; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of disabled adults or elderly persons;



2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

~~7.6.~~ Human rights advocacy committee or long-term care ombudsman council member; or

8.7. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a disabled adult or an elderly person has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse registry and tracking system on the single statewide toll-free telephone number.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each disabled adult or an elderly person alleged to have been abused, neglected, or exploited.

2. Names, addresses, and telephone numbers of the disabled adult's or elderly person's family members.

3. Name, address, and telephone number of each alleged perpetrator.

4. Name, address, and telephone number of the caregiver of the disabled adult or elderly person, if different from the alleged perpetrator.

5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.

6. Description of the physical or psychological injuries sustained.

7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.

8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

Section 3. Subsections (2) and (11) of section 400.471, Florida Statutes, are amended to read:

400.471 Application for license; fee; provisional license; temporary permit.—

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

- (a) A listing of services to be provided, either directly by the applicant or through contractual arrangements with existing providers;
- (b) The number and discipline of professional staff to be employed; and
- (c) Proof of financial ability to operate.

~~If the applicant has applied for a certificate of need under ss. 408.0331-408.045 within the preceding 12 months, the applicant may submit the proof required during the certificate-of-need process along with an attestation that there has been no substantial change in the facts and circumstances underlying the original submission.~~

(11) The agency may not issue a license designated as certified to a home health agency that fails to receive a certificate of need under ss. 408.031-408.045 or that fails to satisfy the requirements of a Medicare certification survey from the agency.

Section 4. Section 408.032, Florida Statutes, is amended to read:

408.032 Definitions.—As used in ss. 408.031-408.045, the term:

- (1) “Agency” means the Agency for Health Care Administration.
- (2) “Capital expenditure” means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, which is made to change the bed capacity of the facility, or substantially change the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, initial financing costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment.
- (3) “Certificate of need” means a written statement issued by the agency evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.
- (4) “Commenced construction” means initiation of and continuous activities beyond site preparation associated with erecting or modifying a health care facility, including procurement of a building permit applying the use of agency-approved construction documents, proof of an executed owner/contractor agreement or an irrevocable or binding forced account, and actual undertaking of foundation forming with steel installation and concrete placing.

(5) “District” means a health service planning district composed of the following counties:

District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.

District 2.—Holmes, Washington, Bay, Jackson, Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.

District 3.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua, Marion, Citrus, Hernando, Sumter, and Lake Counties.

District 4.—Baker, Nassau, Duval, Clay, St. Johns, Flagler, and Volusia Counties.

District 5.—Pasco and Pinellas Counties.

District 6.—Hillsborough, Manatee, Polk, Hardee, and Highlands Counties.

District 7.—Seminole, Orange, Osceola, and Brevard Counties.

District 8.—Sarasota, DeSoto, Charlotte, Lee, Glades, Hendry, and Collier Counties.

District 9.—Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties.

District 10.—Broward County.

District 11.—Dade and Monroe Counties.

(6) “Exemption” means the process by which a proposal that would otherwise require a certificate of need may proceed without a certificate of need.

~~(7)~~(6) “Expedited review” means the process by which certain types of applications are not subject to the review cycle requirements contained in s. 408.039(1), and the letter of intent requirements contained in s. 408.039(2).

~~(8)~~(7) “Health care facility” means a hospital, long-term care hospital, skilled nursing facility, hospice, ~~intermediate care facility~~, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

~~(9)~~(8) “Health services” means diagnostic, curative, or rehabilitative services and includes ~~alcohol treatment, drug abuse treatment, and mental health services~~. Obstetric services are not health services for purposes of ss. 408.031-408.045.

~~(9) “Home health agency” means an organization, as defined in s. 400.462(4), that is certified or seeks certification as a Medicare home health service provider.~~

(10) “Hospice” or “hospice program” means a hospice as defined in part VI of chapter 400.

(11) “Hospital” means a health care facility licensed under chapter 395.

~~(12) “Institutional health service” means a health service which is provided by or through a health care facility and which entails an annual operating cost of \$500,000 or more. The agency shall, by rule, adjust the annual operating cost threshold annually using an appropriate inflation index.~~

~~(13) “Intermediate care facility” means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services above the level of room and board.~~

(12)(14) “Intermediate care facility for the developmentally disabled” means a residential facility licensed under chapter 393 and certified by the Federal Government pursuant to the Social Security Act as a provider of Medicaid services to persons who are mentally retarded or who have a related condition.

(13)(15) “Long-term care hospital” means a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(e) and seeks exclusion from the Medicare prospective payment system for inpatient hospital services.

(14) “Mental health services” means inpatient services provided in a hospital licensed under chapter 395 and listed on the hospital license as psychiatric beds for adults; psychiatric beds for children and adolescents; intensive residential treatment beds for children and adolescents; substance abuse beds for adults; or substance abuse beds for children and adolescents.

~~(16) “Multifacility project” means an integrated residential and health care facility consisting of independent living units, assisted living facility units, and nursing home beds certificated on or after January 1, 1987, where:~~

~~(a) The aggregate total number of independent living units and assisted living facility units exceeds the number of nursing home beds.~~

~~(b) The developer of the project has expended the sum of \$500,000 or more on the certificated and noncertificated elements of the project combined, exclusive of land costs, by the conclusion of the 18th month of the life of the certificate of need.~~

~~(c) The total aggregate cost of construction of the certificated element of the project, when combined with other, noncertificated elements, is \$10 million or more.~~

~~(d) All elements of the project are contiguous or immediately adjacent to each other and construction of all elements will be continuous.~~

(15)(17) “Nursing home geographically underserved area” means:

- (a) A county in which there is no existing or approved nursing home;
- (b) An area with a radius of at least 20 miles in which there is no existing or approved nursing home; or
- (c) An area with a radius of at least 20 miles in which all existing nursing homes have maintained at least a 95 percent occupancy rate for the most recent 6 months or a 90 percent occupancy rate for the most recent 12 months.

~~(18) “Respite care” means short-term care in a licensed health care facility which is personal or custodial and is provided for chronic illness, physical infirmity, or advanced age for the purpose of temporarily relieving family members of the burden of providing care and attendance.~~

~~(16)~~(19) “Skilled nursing facility” means an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

~~(17)~~(20) “Tertiary health service” means a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, organ transplantation, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. The agency shall establish by rule a list of all tertiary health services.

~~(18)~~(24) “Regional area” means any of those regional health planning areas established by the agency to which local and district health planning funds are directed to local health councils through the General Appropriations Act.

Section 5. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 408.033, Florida Statutes, are amended to read:

408.033 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(b) Each local health council may:

1. Develop a district or regional area health plan that ~~permits~~ is consistent with the objectives and strategies in the state health plan, but that shall permit each local health council to develop strategies and set priorities for implementation based on its unique local health needs. The district or regional area health plan must contain preferences for the development of health services and facilities, which may be considered by the agency in its

review of certificate-of-need applications. The district health plan shall be submitted to the agency and updated periodically. The district health plans shall use a uniform format and be submitted to the agency according to a schedule developed by the agency in conjunction with the local health councils. The schedule must provide for ~~coordination between the development of the state health plan and the district health plans~~ and for the development of district health plans by major sections over a multiyear period. The elements of a district plan which are necessary to the review of certificate-of-need applications for proposed projects within the district may be adopted by the agency as a part of its rules.

2. Advise the agency on health care issues and resource allocations.
3. Promote public awareness of community health needs, emphasizing health promotion and cost-effective health service selection.
4. Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and assist the agency and other state agencies in carrying out data collection activities that relate to the functions in this subsection.
5. Monitor the onsite construction progress, if any, of certificate-of-need approved projects and report council findings to the agency on forms provided by the agency.
6. Advise and assist any regional planning councils within each district that have elected to address health issues in their strategic regional policy plans with the development of the health element of the plans to address the health goals and policies in the State Comprehensive Plan.
7. Advise and assist local governments within each district on the development of an optional health plan element of the comprehensive plan provided in chapter 163, to assure compatibility with the health goals and policies in the State Comprehensive Plan and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:
  - a. A copy and appropriate updates of the district health plan;
  - b. A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and
  - c. Applicable agency rules and calculated need methodologies for health facilities and services regulated under s. 408.034 for the district served by the local health council.
8. Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of local, state, federal, and private funds distributed to meet the needs of the medically indigent and other underserved population groups.
9. In conjunction with the Agency for Health Care Administration, plan for services at the local level for persons infected with the human immunodeficiency virus.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the agency with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.

(3) DUTIES AND RESPONSIBILITIES OF THE AGENCY.—

(a) The agency, in conjunction with the local health councils, is responsible for the coordinated planning of all health care services in the state and ~~for the preparation of the state health plan.~~

Section 6. Subsection (2) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393, 395, and parts II, IV, and VI of chapter 400, the agency may not issue a license to any health care facility, health service provider, hospice, or part of a health care facility which fails to receive a certificate of need or an exemption for the licensed facility or service.

Section 7. Section 408.035, Florida Statutes, is amended to read:

408.035 Review criteria.—

(4) The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and health services in context with the following criteria:

~~(1)(a) The need for the health care facilities and health services being proposed in relation to the applicable district health plan, except in emergency circumstances that pose a threat to the public health.~~

~~(2)(b) The availability, quality of care, efficiency, appropriateness, accessibility, and extent of utilization of, and adequacy of like and existing health care facilities and health services in the service district of the applicant.~~

~~(3)(c) The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.~~

~~(d) The availability and adequacy of other health care facilities and health services in the service district of the applicant, such as outpatient care and ambulatory or home care services, which may serve as alternatives for the health care facilities and health services to be provided by the applicant.~~

~~(e) Probable economies and improvements in service which may be derived from operation of joint, cooperative, or shared health care resources.~~

~~(4)(f)~~ The need in the service district of the applicant for special health care equipment and services that are not reasonably and economically accessible in adjoining areas.

~~(5)(g)~~ The needs of need for research and educational facilities, including, but not limited to, facilities with institutional training programs and community training programs for health care practitioners and for doctors of osteopathic medicine and medicine at the student, internship, and residency training levels.

~~(6)(h)~~ The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation; ~~the effects the project will have on clinical needs of health professional training programs in the service district; the extent to which the services will be accessible to schools for health professions in the service district for training purposes if such services are available in a limited number of facilities; the availability of alternative uses of such resources for the provision of other health services; and~~

~~(7)~~ The extent to which the proposed services will enhance access to health care for ~~be accessible to all~~ residents of the service district.

~~(8)(i)~~ The immediate and long-term financial feasibility of the proposal.

~~(j)~~ The special needs and circumstances of health maintenance organizations.

~~(k)~~ The needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the service district in which the entities are located or in adjacent service districts. Such entities may include medical and other health professions, schools, multidisciplinary clinics, and specialty services such as open-heart surgery, radiation therapy, and renal transplantation.

~~(9)(l)~~ The extent to which the proposal will foster competition that promotes quality and cost-effectiveness. The probable impact of the proposed project on the costs of providing health services proposed by the applicant, upon consideration of factors including, but not limited to, the effects of competition on the supply of health services being proposed and the improvements or innovations in the financing and delivery of health services which foster competition and service to promote quality assurance and cost-effectiveness.

~~(10)(m)~~ The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

~~(11)(n)~~ The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

~~(o)~~ The applicant's past and proposed provision of services that promote a continuum of care in a multilevel health care system, which may include, but are not limited to, acute care, skilled nursing care, home health care, and assisted living facilities.



~~(12)(p)~~ The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

~~(2) In cases of capital expenditure proposals for the provision of new health services to inpatients, the agency shall also reference each of the following in its findings of fact:~~

~~(a) That less costly, more efficient, or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable.~~

~~(b) That existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner.~~

~~(c) In the case of new construction or replacement construction, that alternatives to the construction, for example, modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable.~~

~~(d) That patients will experience serious problems in obtaining inpatient care of the type proposed, in the absence of the proposed new service.~~

~~(e) In the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, that the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care, including home health services.~~

Section 8. Section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review.—

(1) APPLICABILITY.—Unless exempt under subsection (3), all health-care-related projects, as described in paragraphs (a)-(h)(k), are subject to review and must file an application for a certificate of need with the agency. The agency is exclusively responsible for determining whether a health-care-related project is subject to review under ss. 408.031-408.045.

(a) The addition of beds by new construction or alteration.

(b) The new construction or establishment of additional health care facilities, including a replacement health care facility when the proposed project site is not located on the same site as the existing health care facility.

~~(c) The conversion from one type of health care facility to another, including the conversion from one level of care to another, in a skilled or intermediate nursing facility, if the conversion effects a change in the level of care of 10 beds or 10 percent of total bed capacity of the skilled or intermediate nursing facility within a 2-year period. If the nursing facility is certified for both skilled and intermediate nursing care, the provisions of this paragraph do not apply.~~

(d) An Any increase in the total licensed bed capacity of a health care facility.

~~(e) Subject to the provisions of paragraph (3)(i), The establishment of a Medicare-certified home health agency, the establishment of a hospice or hospice inpatient facility, except as provided in s. 408.043 or the direct provision of such services by a health care facility or health maintenance organization for those other than the subscribers of the health maintenance organization; except that this paragraph does not apply to the establishment of a Medicare-certified home health agency by a facility described in paragraph (3)(h).~~

~~(f) An acquisition by or on behalf of a health care facility or health maintenance organization, by any means, which acquisition would have required review if the acquisition had been by purchase.~~

~~(f)(g) The establishment of inpatient institutional health services by a health care facility, or a substantial change in such services.~~

~~(h) The acquisition by any means of an existing health care facility by any person, unless the person provides the agency with at least 30 days' written notice of the proposed acquisition, which notice is to include the services to be offered and the bed capacity of the facility, and unless the agency does not determine, within 30 days after receipt of such notice, that the services to be provided and the bed capacity of the facility will be changed.~~

~~(i) An increase in the cost of a project for which a certificate of need has been issued when the increase in cost exceeds 20 percent of the originally approved cost of the project, except that a cost overrun review is not necessary when the cost overrun is less than \$20,000.~~

~~(g)(f) An increase in the number of beds for acute care, nursing home care beds, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, mental health services, or hospital-based distinct part skilled nursing units, or at a long-term care hospital psychiatric or rehabilitation beds.~~

~~(h)(k) The establishment of tertiary health services.~~

(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), projects subject to an expedited review shall include, but not be limited to:

~~(a) Cost overruns, as defined in paragraph (1)(i).~~

~~(a)(b) Research, education, and training programs.~~

~~(b)(c) Shared services contracts or projects.~~

~~(c)(d) A transfer of a certificate of need.~~

~~(d)(e) A 50-percent increase in nursing home beds for a facility incorporated and operating in this state for at least 60 years on or before July 1, 1988, which has a licensed nursing home facility located on a campus providing a variety of residential settings and supportive services. The increased nursing home beds shall be for the exclusive use of the campus residents.~~

Any application on behalf of an applicant meeting this requirement shall be subject to the base fee of \$5,000 provided in s. 408.038.

~~(f) Combination within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict.~~

~~(g) Division into two or more nursing home facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict. Such division shall not be approved if it would adversely affect the original certificate's approved cost.~~

~~(e)(h)~~ Replacement of a health care facility when the proposed project site is located in the same district and within a 1-mile radius of the replaced health care facility.

(f) The conversion of mental health services beds licensed under chapter 395 or hospital-based distinct part skilled nursing unit beds to general acute care beds; the conversion of mental health services beds between or among the licensed bed categories defined as beds for mental health services; or the conversion of general acute care beds to beds for mental health services.

1. Conversion under this paragraph shall not establish a new licensed bed category at the hospital but shall apply only to categories of beds licensed at that hospital.

2. Beds converted under this paragraph must be licensed and operational for at least 12 months before the hospital may apply for additional conversion affecting beds of the same type.

The agency shall develop rules to implement the provisions for expedited review, including time schedule, application content which may be reduced from the full requirements of s. 408.037(1), and application processing.

(3) EXEMPTIONS.—Upon request, the following projects are subject to supported by such documentation as the agency requires, the agency shall grant an exemption from the provisions of subsection (1):

~~(a) For the initiation or expansion of obstetric services.~~

(a)(b) For replacement of any expenditure to replace or renovate any part of a licensed health care facility on the same site, provided that the number of licensed beds in each licensed bed category will not increase and, in the case of a replacement facility, the project site is the same as the facility being replaced.

~~(c) For providing respite care services. An individual may be admitted to a respite care program in a hospital without regard to inpatient requirements relating to admitting order and attendance of a member of a medical staff.~~

(b)(d) For hospice services or home health services provided by a rural hospital, as defined in s. 395.602, or for swing beds in a such rural hospital,

as defined in s. 395.602, in a number that does not exceed one-half of its licensed beds.

~~(c)~~(e) For the conversion of licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, so long as the conversion of the beds does not involve the construction of new facilities. The total number of skilled nursing beds, including swing beds, may not exceed one-half of the total number of licensed beds in the rural hospital as of July 1, 1993. Certified skilled nursing beds designated under this paragraph, excluding swing beds, shall be included in the community nursing home bed inventory. A rural hospital which subsequently decertifies any acute care beds exempted under this paragraph shall notify the agency of the decertification, and the agency shall adjust the community nursing home bed inventory accordingly.

~~(d)~~(f) For the addition of nursing home beds at a skilled nursing facility that is part of a retirement community that provides a variety of residential settings and supportive services and that has been incorporated and operated in this state for at least 65 years on or before July 1, 1994. All nursing home beds must not be available to the public but must be for the exclusive use of the community residents.

~~(e)~~(g) For an increase in the bed capacity of a nursing facility licensed for at least 50 beds as of January 1, 1994, under part II of chapter 400 which is not part of a continuing care facility if, after the increase, the total licensed bed capacity of that facility is not more than 60 beds and if the facility has been continuously licensed since 1950 and has received a superior rating on each of its two most recent licensure surveys.

~~(h)~~ For the establishment of a Medicare-certified home health agency by a facility certified under chapter 651; a retirement community, as defined in s. 400.404(2)(g); or a residential facility that serves only retired military personnel, their dependents, and the surviving dependents of deceased military personnel. Medicare-reimbursed home health services provided through such agency shall be offered exclusively to residents of the facility or retirement community or to residents of facilities or retirement communities owned, operated, or managed by the same corporate entity. Each visit made to deliver Medicare-reimbursable home health services to a home health patient who, at the time of service, is not a resident of the facility or retirement community shall be a deceptive and unfair trade practice and constitutes a violation of ss. 501.201-501.213.

~~(i)~~ For the establishment of a Medicare-certified home health agency. This paragraph shall take effect 90 days after the adjournment sine die of the next regular session of the Legislature occurring after the legislative session in which the Legislature receives a report from the Director of Health Care Administration certifying that the federal Health Care Financing Administration has implemented a per-episode prospective pay system for Medicare-certified home health agencies.

~~(f)~~(j) For an inmate health care facility built by or for the exclusive use of the Department of Corrections as provided in chapter 945. This exemption expires when such facility is converted to other uses.

~~(k)~~ For an expenditure by or on behalf of a health care facility to provide a health service exclusively on an outpatient basis.

~~(g)(4)~~ For the termination of an inpatient a health care service.

~~(h)(m)~~ For the delicensure of beds. A request for exemption ~~An applica-~~ tion submitted under this paragraph must identify the number, the category of beds classification, and the name of the facility in which the beds to be delicensed are located.

~~(i)(n)~~ For the provision of adult inpatient diagnostic cardiac catheterization services in a hospital.

1. In addition to any other documentation otherwise required by the agency, a request for an exemption submitted under this paragraph must comply with the following criteria:

a. The applicant must certify it will not provide therapeutic cardiac catheterization pursuant to the grant of the exemption.

b. The applicant must certify it will meet and continuously maintain the minimum licensure requirements adopted by the agency governing such programs pursuant to subparagraph 2.

c. The applicant must certify it will provide a minimum of 2 percent of its services to charity and Medicaid patients.

2. The agency shall adopt licensure requirements by rule which govern the operation of adult inpatient diagnostic cardiac catheterization programs established pursuant to the exemption provided in this paragraph. The rules shall ensure that such programs:

a. Perform only adult inpatient diagnostic cardiac catheterization services authorized by the exemption and will not provide therapeutic cardiac catheterization or any other services not authorized by the exemption.

b. Maintain sufficient appropriate equipment and health personnel to ensure quality and safety.

c. Maintain appropriate times of operation and protocols to ensure availability and appropriate referrals in the event of emergencies.

d. Maintain appropriate program volumes to ensure quality and safety.

e. Provide a minimum of 2 percent of its services to charity and Medicaid patients each year.

3.a. The exemption provided by this paragraph shall not apply unless the agency determines that the program is in compliance with the requirements of subparagraph 1. and that the program will, after beginning operation, continuously comply with the rules adopted pursuant to subparagraph 2. The agency shall monitor such programs to ensure compliance with the requirements of subparagraph 2.

b.(I) The exemption for a program shall expire immediately when the program fails to comply with the rules adopted pursuant to sub-subparagraphs 2.a., b., and c.

(II) Beginning 18 months after a program first begins treating patients, the exemption for a program shall expire when the program fails to comply with the rules adopted pursuant to sub-subparagraphs 2.d. and e.

(III) If the exemption for a program expires pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the agency shall not grant an exemption pursuant to this paragraph for an adult inpatient diagnostic cardiac catheterization program located at the same hospital until 2 years following the date of the determination by the agency that the program failed to comply with the rules adopted pursuant to subparagraph 2.

~~4. The agency shall not grant any exemption under this paragraph until the adoption of the rules required under this paragraph, or until March 1, 1998, whichever comes first. However, if final rules have not been adopted by March 1, 1998, the proposed rules governing the exemptions shall be used by the agency to grant exemptions under the provisions of this paragraph until final rules become effective.~~

~~(j)(o)~~ For ~~any expenditure to provide~~ mobile surgical facilities and related health care services provided under contract with the Department of Corrections or a private correctional facility operating pursuant to chapter 957.

~~(k)(p)~~ For state veterans' nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs in accordance with part II of chapter 296 for which at least 50 percent of the construction cost is federally funded and for which the Federal Government pays a per diem rate not to exceed one-half of the cost of the veterans' care in such state nursing homes. These beds shall not be included in the nursing home bed inventory.

(l) For combination within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict. An exemption granted under this paragraph shall extend the validity period of the certificates of need to be consolidated by the length of the period beginning upon submission of the exemption request and ending with issuance of the exemption. The longest validity period among the certificates shall be applicable to each of the combined certificates.

(m) For division into two or more nursing home facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict. An exemption granted under this paragraph shall extend the validity period of the certificate of need to be divided by the length of the period beginning upon submission of the exemption request and ending with issuance of the exemption.

(n) For the addition of hospital beds licensed under chapter 395 for acute care, mental health services, or a hospital-based distinct part skilled nursing unit in a number that may not exceed 10 total beds or 10 percent of the licensed capacity of the bed category being expanded, whichever is greater.

Beds for specialty burn units, neonatal intensive care units, or comprehensive rehabilitation, or at a long-term care hospital, may not be increased under this paragraph.

1. In addition to any other documentation otherwise required by the agency, a request for exemption submitted under this paragraph must:

a. Certify that the prior 12-month average occupancy rate for the category of licensed beds being expanded at the facility meets or exceeds 80 percent or, for a hospital-based distinct part skilled nursing unit, the prior 12-month average occupancy rate meets or exceeds 96 percent.

b. Certify that any beds of the same type authorized for the facility under this paragraph before the date of the current request for an exemption have been licensed and operational for at least 12 months.

2. The timeframes and monitoring process specified in s. 408.040(2)(a)-(c) apply to any exemption issued under this paragraph.

3. The agency shall count beds authorized under this paragraph as approved beds in the published inventory of hospital beds until the beds are licensed.

(o) For the addition of acute care beds, as authorized by rule consistent with s. 395.003(4), in a number that may not exceed 10 total beds or 10 percent of licensed bed capacity, whichever is greater, for temporary beds in a hospital that has experienced high seasonal occupancy within the prior 12-month period or in a hospital that must respond to emergency circumstances.

(p) For the addition of nursing home beds licensed under chapter 400 in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater.

1. In addition to any other documentation required by the agency, a request for exemption submitted under this paragraph must:

a. Effective until June 30, 2001, certify that the facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition.

b. Effective on July 1, 2001, certify that the facility has been designated as a Gold Seal nursing home under s. 400.235.

c. Certify that the prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent.

d. Certify that any beds authorized for the facility under this paragraph before the date of the current request for an exemption have been licensed and operational for at least 12 months.

2. The timeframes and monitoring process specified in s. 408.040(2)(a)-(c) apply to any exemption issued under this paragraph.

3. The agency shall count beds authorized under this paragraph as approved beds in the published inventory of nursing home beds until the beds are licensed.

(4) A request for exemption under this subsection (3) may be made at any time and is not subject to the batching requirements of this section. The request shall be supported by such documentation as the agency requires by rule. The agency shall assess a fee of \$250 for each request for exemption submitted under subsection (3).

Section 9. Paragraph (a) of subsection (1) of section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) An application for a certificate of need must contain:

(a) A detailed description of the proposed project and statement of its purpose and need in relation to the local health plan ~~and the state health plan.~~

Section 10. Section 408.038, Florida Statutes, is amended to read:

408.038 Fees.—The agency department shall assess fees on certificate-of-need applications. Such fees shall be for the purpose of funding the functions of the local health councils and the activities of the agency department and shall be allocated as provided in s. 408.033. The fee shall be determined as follows:

(1) A minimum base fee of \$5,000.

(2) In addition to the base fee of \$5,000, 0.015 of each dollar of proposed expenditure, except that a fee may not exceed \$22,000.

Section 11. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (6) of section 408.039, Florida Statutes, are amended to read:

408.039 Review process.—The review process for certificates of need shall be as follows:

(3) APPLICATION PROCESSING.—

(a) An applicant shall file an application with the agency department, and shall furnish a copy of the application to the local health council and the agency department. Within 15 days after the applicable application filing deadline established by agency department rule, the staff of the agency department shall determine if the application is complete. If the application is incomplete, the staff shall request specific information from the applicant necessary for the application to be complete; however, the staff may make only one such request. If the requested information is not filed with the agency department within 21 days of the receipt of the staff's request, the application shall be deemed incomplete and deemed withdrawn from consideration.



(b) Upon the request of any applicant or substantially affected person within 14 days after notice that an application has been filed, a public hearing may be held at the agency's department's discretion if the agency department determines that a proposed project involves issues of great local public interest. The public hearing shall allow applicants and other interested parties reasonable time to present their positions and to present rebuttal information. A recorded verbatim record of the hearing shall be maintained. The public hearing shall be held at the local level within 21 days after the application is deemed complete.

(4) STAFF RECOMMENDATIONS.—

(a) The agency's department's review of and final agency action on applications shall be in accordance with the district health plan, and statutory criteria, and the implementing administrative rules. In the application review process, the agency department shall give a preference, as defined by rule of the agency department, to an applicant which proposes to develop a nursing home in a nursing home geographically underserved area.

(b) Within 60 days after all the applications in a review cycle are determined to be complete, the agency department shall issue its State Agency Action Report and Notice of Intent to grant a certificate of need for the project in its entirety, to grant a certificate of need for identifiable portions of the project, or to deny a certificate of need. The State Agency Action Report shall set forth in writing its findings of fact and determinations upon which its decision is based. If a finding of fact or determination by the agency department is counter to the district health plan of the local health council, the agency department shall provide in writing its reason for its findings, item by item, to the local health council. If the agency department intends to grant a certificate of need, the State Agency Action Report or the Notice of Intent shall also include any conditions which the agency department intends to attach to the certificate of need. The agency department shall designate by rule a senior staff person, other than the person who issues the final order, to issue State Agency Action Reports and Notices of Intent.

(c) The agency department shall publish its proposed decision set forth in the Notice of Intent in the Florida Administrative Weekly within 14 days after the Notice of Intent is issued.

(d) If no administrative hearing is requested pursuant to subsection (5), the State Agency Action Report and the Notice of Intent shall become the final order of the agency department. The agency department shall provide a copy of the final order to the appropriate local health council.

(6) JUDICIAL REVIEW.—

(a) A party to an administrative hearing for an application for a certificate of need has the right, within not more than 30 days after the date of the final order, to seek judicial review in the District Court of Appeal pursuant to s. 120.68. The agency department shall be a party in any such proceeding.

(b) In such judicial review, the court shall affirm the final order of the agency department, unless the decision is arbitrary, capricious, or not in compliance with ss. 408.031-408.045.

Section 12. Subsections (1) and (2) of section 408.040, Florida Statutes, are amended to read:

408.040 Conditions and monitoring.—

(1)(a) The agency may issue a certificate of need predicated upon statements of intent expressed by an applicant in the application for a certificate of need. Any conditions imposed on a certificate of need based on such statements of intent shall be stated on the face of the certificate of need.

~~1. Any certificate of need issued for construction of a new hospital or for the addition of beds to an existing hospital shall include a statement of the number of beds approved by category of service, including rehabilitation or psychiatric service, for which the agency has adopted by rule a specialty-bed-need methodology. All beds that are approved, but are not covered by any specialty-bed-need methodology, shall be designated as general.~~

~~(b)2.~~ The agency may consider, in addition to the other criteria specified in s. 408.035, a statement of intent by the applicant that a specified to designate a percentage of the annual patient days at beds of the facility will be utilized for use by patients eligible for care under Title XIX of the Social Security Act. Any certificate of need issued to a nursing home in reliance upon an applicant's statements ~~that to provide a specified percentage number of annual patient days will be utilized beds for use by residents eligible for care under Title XIX of the Social Security Act~~ must include a statement that such certification is a condition of issuance of the certificate of need. The certificate-of-need program shall notify the Medicaid program office and the Department of Elderly Affairs when it imposes conditions as authorized in this ~~paragraph subparagraph~~ in an area in which a community diversion pilot project is implemented.

~~(c)(b)~~ A certificateholder may apply to the agency for a modification of conditions imposed under paragraph (a) or paragraph (b). If the holder of a certificate of need demonstrates good cause why the certificate should be modified, the agency shall reissue the certificate of need with such modifications as may be appropriate. The agency shall by rule define the factors constituting good cause for modification.

~~(d)(e)~~ If the holder of a certificate of need fails to comply with a condition upon which the issuance of the certificate was predicated, the agency may assess an administrative fine against the certificateholder in an amount not to exceed \$1,000 per failure per day. In assessing the penalty, the agency shall take into account as mitigation the relative lack of severity of a particular failure. Proceeds of such penalties shall be deposited in the Public Medical Assistance Trust Fund.

(2)(a) Unless the applicant has commenced construction, if the project provides for construction, unless the applicant has incurred an enforceable capital expenditure commitment for a project, if the project does not provide

for construction, or unless subject to paragraph (b), a certificate of need shall terminate 18 months after the date of issuance, ~~except in the case of a multifacility project, as defined in s. 408.032, where the certificate of need shall terminate 2 years after the date of issuance.~~ The agency shall monitor the progress of the holder of the certificate of need in meeting the timetable for project development specified in the application with the assistance of the local health council as specified in s. 408.033(1)(b)5., and may revoke the certificate of need, if the holder of the certificate is not meeting such timetable and is not making a good-faith ~~good-faith~~ effort, as defined by rule, to meet it.

(b) A certificate of need issued to an applicant holding a provisional certificate of authority under chapter 651 shall terminate 1 year after the applicant receives a valid certificate of authority from the Department of Insurance.

(c) The certificate-of-need validity period for a project shall be extended by the agency, to the extent that the applicant demonstrates to the satisfaction of the agency that good-faith ~~good-faith~~ commencement of the project is being delayed by litigation or by governmental action or inaction with respect to regulations or permitting precluding commencement of the project.

~~(d) If an application is filed to consolidate two or more certificates as authorized by s. 408.036(2)(f) or to divide a certificate of need into two or more facilities as authorized by s. 408.036(2)(g), the validity period of the certificate or certificates of need to be consolidated or divided shall be extended for the period beginning upon submission of the application and ending when final agency action and any appeal from such action has been concluded. However, no such suspension shall be effected if the application is withdrawn by the applicant.~~

Section 13. Section 408.044, Florida Statutes, is amended to read:

408.044 Injunction.—Notwithstanding the existence or pursuit of any other remedy, the agency department may maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the pursuit of a project subject to review under ss. 408.031-408.045, in the absence of a valid certificate of need.

Section 14. Section 408.045, Florida Statutes, is amended to read:

408.045 Certificate of need; competitive sealed proposals.—

(1) The application, review, and issuance procedures for a certificate of need for an intermediate care facility for the developmentally disabled may be made by the agency department by competitive sealed proposals.

(2) The agency department shall make a decision regarding the issuance of the certificate of need in accordance with the provisions of s. 287.057(15), rules adopted by the agency department relating to intermediate care facilities for the developmentally disabled, and the criteria in s. 408.035, as further defined by rule.

(3) Notification of the decision shall be issued to all applicants not later than 28 calendar days after the date responses to a request for proposal are due.

(4) The procedures provided for under this section are exempt from the batching cycle requirements and the public hearing requirement of s. 408.039.

(5) The agency department may use the competitive sealed proposal procedure for determining a certificate of need for other types of health care facilities and services if the agency department identifies an unmet health care need and when funding in whole or in part for such health care facilities or services is authorized by the Legislature.

Section 15. (1)(a) There is created a certificate-of-need workgroup staffed by the Agency for Health Care Administration.

(b) Workgroup participants shall be responsible for only the expenses that they generate individually through workgroup participation. The agency shall be responsible for expenses incidental to the production of any required data or reports.

(2) The workgroup shall consist of 30 members, 10 appointed by the Governor, 10 appointed by the President of the Senate, and 10 appointed by the Speaker of the House of Representatives. The workgroup chairperson shall be selected by majority vote of a quorum present. Sixteen members shall constitute a quorum. The membership shall include, but not be limited to, representatives from health care provider organizations, health care facilities, individual health care practitioners, local health councils, and consumer organizations, and persons with health care market expertise as a private-sector consultant.

(3) Appointment to the workgroup shall be as follows:

(a) The Governor shall appoint one representative each from the hospital industry; nursing home industry; hospice industry; local health councils; a consumer organization; and three health care market consultants, one of whom is a recognized expert on hospital markets, one of whom is a recognized expert on nursing home or long-term-care markets, and one of whom is a recognized expert on hospice markets; one representative from the Medicaid program; and one representative from a health care facility that provides a tertiary service.

(b) The President of the Senate shall appoint a representative of a for-profit hospital, a representative of a not-for-profit hospital, a representative of a public hospital, two representatives of the nursing home industry, two representatives of the hospice industry, a representative of a consumer organization, a representative from the Department of Elderly Affairs involved with the implementation of a long-term-care community diversion program, and a health care market consultant with expertise in health care economics.

(c) The Speaker of the House of Representatives shall appoint a representative from the Florida Hospital Association, a representative of the

Association of Community Hospitals and Health Systems of Florida, a representative of the Florida League of Health Systems, a representative of the Florida Health Care Association, a representative of the Florida Association of Homes for the Aging, three representatives of Florida Hospices and Palliative Care, one representative of local health councils, and one representative of a consumer organization.

(4) The workgroup shall study issues pertaining to the certificate-of-need program, including the impact of trends in health care delivery and financing. The workgroup shall study issues relating to implementation of the certificate-of-need program.

(5) The workgroup shall meet at least annually, at the request of the chairperson. The workgroup shall submit an interim report by December 31, 2001, and a final report by December 31, 2002. The workgroup is abolished effective July 1, 2003.

Section 16. Subsection (7) of section 651.118, Florida Statutes, is amended to read:

651.118 Agency for Health Care Administration; certificates of need; sheltered beds; community beds.—

(7) Notwithstanding the provisions of subsection (2), at the discretion of the continuing care provider, sheltered nursing home beds may be used for persons who are not residents of the facility and who are not parties to a continuing care contract for a period of up to 5 years after the date of issuance of the initial nursing home license. A provider whose 5-year period has expired or is expiring may request the Agency for Health Care Administration for an extension, not to exceed 30 percent of the total sheltered nursing home beds, if the utilization by residents of the facility in the sheltered beds will not generate sufficient income to cover facility expenses, as evidenced by one of the following:

(a) The facility has a net loss for the most recent fiscal year as determined under generally accepted accounting principles, excluding the effects of extraordinary or unusual items, as demonstrated in the most recently audited financial statement; or

(b) The facility would have had a pro forma loss for the most recent fiscal year, excluding the effects of extraordinary or unusual items, if revenues were reduced by the amount of revenues from persons in sheltered beds who were not residents, as reported on by a certified public accountant.

The agency shall be authorized to grant an extension to the provider based on the evidence required in this subsection. The agency may request a facility to use up to 25 percent of the patient days generated by new admissions of nonresidents during the extension period to serve Medicaid recipients for those beds authorized for extended use if there is a demonstrated need in the respective service area and if funds are available. A provider who obtains an extension is prohibited from applying for additional sheltered beds under the provision of subsection (2), unless additional residential

units are built or the provider can demonstrate need by facility residents to the Agency for Health Care Administration. The 5-year limit does not apply to up to five sheltered beds designated for inpatient hospice care as part of a contractual arrangement with a hospice licensed under part VI of chapter 400. A facility that uses such beds after the 5-year period shall report such use to the Agency for Health Care Administration. For purposes of this subsection, "resident" means a person who, upon admission to the facility, initially resides in a part of the facility not licensed under part II of chapter 400.

Section 17. Subsection (3) of section 400.464, Florida Statutes, is repealed.

Section 18. Applications for certificates of need submitted under section 408.031-408.045, Florida Statutes, before the effective date of this act shall be governed by the law in effect at the time the application was submitted.

Section 19. Pursuant to section 187 of chapter 99-397, Laws of Florida, the Agency for Health Care Administration was directed to conduct a detailed study and analysis of clinical laboratory services for kidney dialysis patients in the State of Florida and to report back to the Legislature no later than February 1, 2000. The agency reported that additional time and investigative resources were necessary to adequately respond to the legislative directives. Therefore, the sum of \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund is appropriated to the Agency for Health Care Administration to contract with the University of South Florida to conduct a review of laboratory test utilization, any self-referral to clinical laboratories, financial arrangements among kidney dialysis centers, their medical directors, referring physicians, and any business relationships and affiliations with clinical laboratories, and the quality and effectiveness of kidney dialysis treatment in this state. A report on the findings from such review shall be presented to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature no later than February 1, 2001.

Section 20. Subsections (1) and (3) of section 455.564, Florida Statutes, are amended to read:

455.564 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application and shall require the social security number of the applicant, except as provided in paragraph (b). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department

may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a non-electronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

(b) If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

(3)(a) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this part or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete, and the time period in which the licensure application must be granted or denied shall be tolled until 15 days after the receipt of the final results of the investigation or prosecution.

(b) If an applicant has been convicted of a felony related to the practice or ability to practice any health care profession, the board, or the department when there is no board, may require the applicant to prove that his or her civil rights have been restored.

(c) In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.

Section 21. Paragraph (d) is added to subsection (4) of section 455.565, Florida Statutes, to read:

455.565 Designated health care professionals; information required for licensure.—

(4)

(d) Any applicant for initial licensure or renewal of licensure as a health care practitioner who submits to the Department of Health a set of fingerprints or information required for the criminal history check required under this section shall not be required to provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Family Services for employment or licensure with such agency or department if the applicant has undergone a criminal history check as a condition of initial licensure or licensure renewal as a health care practitioner with the Department of Health or any of its regulatory boards, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services shall obtain criminal history information for employment or licensure of health care practitioners by such agency and departments from the Department of Health's health care practitioner credentialing system.

Section 22. Section 455.5651, Florida Statutes, is amended to read:

455.5651 Practitioner profile; creation.—

(1) Beginning July 1, 1999, the Department of Health shall compile the information submitted pursuant to s. 455.565 into a practitioner profile of the applicant submitting the information, except that the Department of Health may develop a format to compile uniformly any information submitted under s. 455.565(4)(b).

(2) On the profile ~~published required~~ under subsection (1), the department shall indicate if the information provided under s. 455.565(1)(a)7. is not corroborated by a criminal history check conducted according to this subsection. If the information provided under s. 455.565(1)(a)7. is corroborated by the criminal history check, the fact that the criminal history check was performed need not be indicated on the profile. The department, or the board having regulatory authority over the practitioner acting on behalf of the department, shall investigate any information received by the department or the board when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice.

(3) The Department of Health may include in each practitioner's practitioner profile that criminal information that directly relates to the practitioner's ability to competently practice his or her profession. The department must include in each practitioner's practitioner profile the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

(4) The Department of Health shall include, with respect to a practitioner licensed under chapter 458 or chapter 459, a statement of how the practitioner has elected to comply with the financial responsibility requirements of s. 458.320 or s. 459.0085. The department shall include, with respect to practitioners subject to s. 455.694, a statement of how the practitioner has elected to comply with the financial responsibility requirements of that section. The department shall include, with respect to practitioners licensed



under chapter 458, chapter 459, or chapter 461, information relating to liability actions which has been reported under s. 455.697 or s. 627.912 within the previous 10 years for any paid claim that exceeds \$5,000. Such claims information shall be reported in the context of comparing an individual practitioner's claims to the experience of other practitioners ~~physicians~~ within the same specialty, or profession if the practitioner is not a specialist, to the extent such information is available to the Department of Health. If information relating to a liability action is included in a practitioner's practitioner profile, the profile must also include the following statement: "Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the practitioner ~~physician~~. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred."

(5) The Department of Health may not include disciplinary action taken by a licensed hospital or an ambulatory surgical center in the practitioner profile.

(6) The Department of Health may include in the practitioner's practitioner profile any other information that is a public record of any governmental entity and that relates to a practitioner's ability to competently practice his or her profession. However, the department must consult with the board having regulatory authority over the practitioner before such information is included in his or her profile.

(7) Upon the completion of a practitioner profile under this section, the Department of Health shall furnish the practitioner who is the subject of the profile a copy of it. The practitioner has a period of 30 days in which to review the profile and to correct any factual inaccuracies in it. The Department of Health shall make the profile available to the public at the end of the 30-day period. The department shall make the profiles available to the public through the World Wide Web and other commonly used means of distribution.

(8) Making a practitioner profile available to the public under this section does not constitute agency action for which a hearing under s. 120.57 may be sought.

Section 23. Section 455.5653, Florida Statutes, is amended to read:

455.5653 Practitioner profiles; data storage.—Effective upon this act becoming a law, the Department of Health must develop or contract for a computer system to accommodate the new data collection and storage requirements under this act pending the development and operation of a computer system by the Department of Health for handling the collection, input, revision, and update of data submitted by physicians as a part of their initial licensure or renewal to be compiled into individual practitioner profiles. The Department of Health must incorporate any data required by this act into the computer system used in conjunction with the regulation of health care professions under its jurisdiction. ~~The department must develop, by the year 2000, a schedule and procedures for each practitioner within a health care profession regulated within the Division of Medical Quality~~

~~Assurance to submit relevant information to be compiled into a profile to be made available to the public.~~ The Department of Health is authorized to contract with and negotiate any interagency agreement necessary to develop and implement the practitioner profiles. The Department of Health shall have access to any information or record maintained by the Agency for Health Care Administration, including any information or record that is otherwise confidential and exempt from the provisions of chapter 119 and s. 24(a), Art. I of the State Constitution, so that the Department of Health may corroborate any information that practitioners ~~physicians~~ are required to report under s. 455.565.

Section 24. Section 455.5654, Florida Statutes, is amended to read:

455.5654 Practitioner profiles; rules; workshops.—Effective upon this act becoming a law, the Department of Health shall adopt rules for the form of a practitioner profile that the agency is required to prepare. The Department of Health, pursuant to chapter 120, must hold public workshops for purposes of rule development to implement this section. An agency to which information is to be submitted under this act may adopt by rule a form for the submission of the information required under s. 455.565.

Section 25. Subsection (1) of section 455.567, Florida Statutes, is amended to read:

455.567 Sexual misconduct; disqualification for license, certificate, or registration.—

(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

Section 26. Paragraphs (f) and (u) of subsection (1), paragraph (c) of subsection (2), and subsection (3) of section 455.624, Florida Statutes, are amended, and paragraphs (y) and (z) are added to subsection (1) of said section, to read:

455.624 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(f) Having a license or the authority to practice any ~~the~~ regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

~~(u) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 455.567(1) a patient or client in verbal or physical sexual activity. For the purposes of this section, a patient or client shall be presumed to be incapable of giving free, full, and informed consent to verbal or physical sexual activity.~~

~~(y) Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the secretary or the secretary's designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of his or her profession with reasonable skill and safety to patients.~~

~~(z) Testing positive for any drug, as defined in s. 112.0455, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug.~~

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(c) Restriction of practice or license.

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

(3)(a) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time failure of the licensee to satisfy continuing education requirements established by the board, or by the department if there is no board, the board or department, as applicable, shall issue a citation in accordance with s. 455.617 and assess a fine, as determined by the board or department by rule. In addition, for each hour of continuing education not completed or completed late, the board or department, as applicable, may

require the licensee to take 1 additional hour of continuing education for each hour not completed or completed late.

(b) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time violation of a practice act for unprofessional conduct, as used in ss. 464.018(1)(h), 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual harm to the patient occurred, the board or department, as applicable, shall issue a citation in accordance with s. 455.617 and assess a penalty as determined by rule of the board or department.

Section 27. For the purpose of incorporating the amendment to section 455.624, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

455.577 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.624, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

455.631 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.624, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

455.651 Disclosure of confidential information.—

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.624, and, if applicable, shall be removed from office, employment, or the contractual relationship.

455.712 Business establishments; requirements for active status licenses.—

(1) A business establishment regulated by the Division of Medical Quality Assurance pursuant to this part may provide regulated services only if the business establishment has an active status license. A business establishment that provides regulated services without an active status license is in violation of this section and s. 455.624, and the board, or the department if there is no board, may impose discipline on the business establishment.

458.347 Physician assistants.—

## (7) PHYSICIAN ASSISTANT LICENSURE.—

(g) The Board of Medicine may impose any of the penalties specified in ss. 455.624 and 458.331(2) upon a physician assistant if the physician assistant or the supervising physician has been found guilty of or is being investigated for any act that constitutes a violation of this chapter or part II of chapter 455.

## 459.022 Physician assistants.—

## (7) PHYSICIAN ASSISTANT LICENSURE.—

(f) The Board of Osteopathic Medicine may impose any of the penalties specified in ss. 455.624 and 459.015(2) upon a physician assistant if the physician assistant or the supervising physician has been found guilty of or is being investigated for any act that constitutes a violation of this chapter or part II of chapter 455.

## 468.1755 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violation of any provision of s. 455.624(1) or s. 468.1745(1).

## 468.719 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary actions provided for in subsection (2):

(a) A violation of any law relating to the practice of athletic training, including, but not limited to, any violation of this part, s. 455.624, or any rule adopted pursuant thereto.

(2) When the board finds any person guilty of any of the acts set forth in subsection (1), the board may enter an order imposing one or more of the penalties provided in s. 455.624.

## 468.811 Disciplinary proceedings.—

(1) The following acts are grounds for disciplinary action against a licensee and the issuance of cease and desist orders or other related action by the department, pursuant to s. 455.624, against any person who engages in or aids in a violation.

(a) Attempting to procure a license by fraudulent misrepresentation.

(b) Having a license to practice orthotics, prosthetics, or pedorthics revoked, suspended, or otherwise acted against, including the denial of licensure in another jurisdiction.

(c) Being convicted or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a crime that directly relates to the practice of orthotics, prosthetics, or pedorthics, including violations of federal laws or regulations regarding orthotics, prosthetics, or pedorthics.

(d) Filing a report or record that the licensee knows is false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only reports or records that are signed in a person's capacity as a licensee under this act.

(e) Advertising goods or services in a fraudulent, false, deceptive, or misleading manner.

(f) Violation of this act or part II of chapter 455, or any rules adopted thereunder.

(g) Violation of an order of the board, agency, or department previously entered in a disciplinary hearing or failure to comply with a subpoena issued by the board, agency, or department.

(h) Practicing with a revoked, suspended, or inactive license.

(i) Gross or repeated malpractice or the failure to deliver orthotic, prosthetic, or pedorthic services with that level of care and skill which is recognized by a reasonably prudent licensed practitioner with similar professional training as being acceptable under similar conditions and circumstances.

(j) Failing to provide written notice of any applicable warranty for an orthosis, prosthesis, or pedorthic device that is provided to a patient.

(2) The board may enter an order imposing one or more of the penalties in s. 455.624(2) against any person who violates any provision of subsection (1).

#### 484.056 Disciplinary proceedings.—

(1) The following acts relating to the practice of dispensing hearing aids shall be grounds for both disciplinary action against a hearing aid specialist as set forth in this section and cease and desist or other related action by the department as set forth in s. 455.637 against any person owning or operating a hearing aid establishment who engages in, aids, or abets any such violation:

(a) Violation of any provision of s. 455.624(1), s. 484.0512, or s. 484.053.

#### Section 28. Section 455.704, Florida Statutes, is repealed.

Section 29. Subsections (1), (2), and (3) of section 455.707, Florida Statutes, are amended to read:

#### 455.707 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner ~~treatment~~ programs under this section. The department may adopt rules setting forth appropriate criteria for approval

of treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee. The rules ~~may~~ must specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, and requirements for the continued care and monitoring of a professional by the consultant by an approved at a department-approved treatment provider. ~~The department shall not compel any impaired practitioner program in existence on October 1, 1992, to serve additional professions.~~

(2) The department shall retain one or more impaired practitioner consultants ~~as recommended by the committee~~. A consultant shall be a licensee ~~or recovered licensee~~ under the jurisdiction of the Division of Medical Quality Assurance within the department, and at least one consultant must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, impaired.

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute grounds for discipline pursuant to s. 455.624 or the corresponding grounds for discipline within the applicable practice act ~~a complaint within the meaning of s. 455.624~~ if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.
2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.
3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as required by the consultant determined by the panel, or the department when there is no board, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.
4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.

(b) If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as

the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case.

(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 455.621 and shall be exempt from the provisions of this subsection.

(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.

(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (5) and (6).

(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner treatment program and no other complaint against the licensee exists.

Section 30. Subsection (1) of section 310.102, Florida Statutes, is amended to read:

310.102 Treatment programs for impaired pilots and deputy pilots.—

(1) The department shall, by rule, designate approved treatment programs for impaired pilots and deputy pilots under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers ~~based on the policies and guidelines established by the Impaired Practitioners Committee under s. 455.704.~~

Section 31. Section 455.711, Florida Statutes, is amended to read:

455.711 Licenses; active and inactive and delinquent status; delinquency.—

(1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this section and s. 455.624, and the board, or the department if there is no board, may impose discipline on the licensee.

(2) Each board, or the department if there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive



~~status. However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.~~

(3) Each board, or the department if there is no board, shall by rule impose a fee for renewal of an active or inactive status license. The renewal fee for an inactive status license may not exceed which is no greater than the fee for an active status license.

(4) Notwithstanding any other provision of law to the contrary, a licensee may change licensure status at any time.

(a) Active status licensees choosing inactive status at the time of license renewal must pay the inactive status renewal fee, and, if applicable, the delinquency fee and the fee to change licensure status. Active status licensees choosing inactive status at any other time than at the time of license renewal must pay the fee to change licensure status.

(b) An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the board, or the department if there is no board, and meets all continuing education requirements as specified in this section. Inactive status licensees choosing active status at the time of license renewal must pay the active status renewal fee, any applicable reactivation fees as set by the board, or the department if there is no board, and, if applicable, the delinquency fee and the fee to change licensure status. Inactive status licensees choosing active status at any other time than at the time of license renewal must pay the difference between the inactive status renewal fee and the active status renewal fee, if any exists, any applicable reactivation fees as set by the board, or the department if there is no board, and the fee to change licensure status.

(5) A licensee must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active status or inactive status license before the license expires. If a licensee fails to renew before the license expires, the license becomes delinquent in the license cycle following expiration.

(6) A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(7) Each board, or the department if there is no board, shall by rule impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department if there is no board, shall by rule impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department if there is no board, may by rule impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) Before reactivation, an inactive status licensee or a delinquent licensee who was inactive prior to becoming delinquent must meet the same continuing education requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent.

(11) The status or a change in status of a licensee does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business.

(13) The board, or the department when there is no board, may adopt rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.

Section 32. Subsection (3) of section 455.587, Florida Statutes, is amended to read:

455.587 Fees; receipts; disposition.—

(3) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active status licensee and each ~~voluntary~~ inactive status licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions as required in this section. Not more than one such assessment may be made in any 4-year period without specific legislative authorization.

Section 33. Subsection (1) of section 455.714, Florida Statutes, is amended to read:

455.714 Renewal and cancellation notices.—

(1) At least 90 days before the end of a licensure cycle, the department shall:

(a) Forward a licensure renewal notification to an active or inactive status licensee at the licensee's last known address of record with the department.

(b) Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record with the department.

Section 34. Section 455.719, Florida Statutes, is created to read:

455.719 Health care professionals; exemption from disqualification from employment or contracting.—Any other provision of law to the contrary notwithstanding, only the appropriate regulatory board, or the department when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07 to a person under the licensing jurisdiction of that board or the department, as applicable.

Section 35. Section 455.637, Florida Statutes, is amended to read:

455.637 Unlicensed practice of a health care profession; intent; cease and desist notice; penalties ~~civil penalty~~; enforcement; citations; fees; allocation and disposition of moneys collected.—

(1) It is the intent of the Legislature that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license by the appropriate regulatory board or the department when there is no board. The unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services, is strictly prohibited.

(2) The penalties for unlicensed practice of a health care profession shall include the following:

(a)(4) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this part or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order,

the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order.

(b) In addition to the foregoing remedies under paragraph (a), the department may impose by citation an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. If the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The department may adopt rules to implement this section. The penalty shall be a fine of not less than \$500 nor more than \$5,000 as established by rule of the department. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate violation. The department shall be entitled to recover the costs of investigation and prosecution in addition to the fine levied pursuant to the citation. Service of a citation may be made by personal service or by mail to the subject at the subject's last known address or place of practice. If the department is required to seek enforcement of the cease and desist or agency order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(c)(2) In addition to or in lieu of any other administrative remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation and prosecution.

(d) In addition to the administrative and civil remedies under paragraphs (b) and (c) and in addition to the criminal violations and penalties listed in the individual health care practice acts:

1. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession. Practicing without an active, valid license also includes practicing on a suspended, revoked, or void license, but does not include practicing, attempting to practice, or offering to practice with an inactive or delinquent license for a period of up to 12 months which is addressed in subparagraph 3. Applying for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession shall be deemed to be an attempt or offer to practice that health care profession without a license. Holding oneself out, regardless of the means of communication, as able to practice a health care profession or as able to provide services that

require a health care license shall be deemed to be an attempt or offer to practice such profession without a license. The minimum penalty for violating this subparagraph shall be a fine of \$1,000 and a minimum mandatory period of incarceration of 1 year.

2. It is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury. For purposes of this section, "serious bodily injury" means death; brain or spinal damage; disfigurement; fracture or dislocation of bones or joints; limitation of neurological, physical, or sensory function; or any condition that required subsequent surgical repair. The minimum penalty for violating this subparagraph shall be a fine of \$1,000 and a minimum mandatory period of incarceration of 1 year.

3. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months. However, practicing, attempting to practice, or offering to practice a health care profession when that person's license has been inactive or delinquent for a period of time of 12 months or more shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The minimum penalty for violating this subparagraph shall be a term of imprisonment of 30 days and a fine of \$500.

(3) Because all enforcement costs should be covered by professions regulated by the department, the department shall impose, upon initial licensure and each licensure renewal, a special fee of \$5 per licensee to fund efforts to combat unlicensed activity. Such fee shall be in addition to all other fees collected from each licensee. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. The department shall make direct charges to the Medical Quality Assurance Trust Fund by profession. The department shall seek board advice regarding enforcement methods and strategies. The department shall directly credit the Medical Quality Assurance Trust Fund, by profession, with the revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management report provided for in s. 455.587. For an unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession. The department shall also use these funds to inform and educate consumers generally on the importance of using licensed health care practitioners.

(3)(a) Notwithstanding the provisions of s. 455.621, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of

~~the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.621. If the subject disputes the matter in the citation, the procedures set forth in s. 455.621 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.~~

~~(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.~~

~~(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.~~

~~(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.~~

~~(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.641 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.~~

~~(4)(5) The provisions of this section apply only to health care the professional practice acts administered by the department.~~

~~(5) Nothing herein shall be construed to limit or restrict the sale, use, or recommendation of the use of a dietary supplement, as defined by the Food, Drug, and Cosmetic Act, Title 21, s. 321, so long as the person selling, using, or recommending the dietary supplement does so in compliance with federal and state law.~~

Section 36. Section 458.3135, Florida Statutes, is created to read:

458.3135 Temporary certificate for visiting physicians to practice in approved cancer centers.—

(1) Any physician who has been accepted for a course of training by a cancer center approved by the board and who meets all of the qualifications set forth in this section may be issued a temporary certificate to practice in a board-approved cancer center under the International Cancer Center Visiting Physician Program. A certificate may be issued to a physician who will be training under the direct supervision of a physician employed by or under contract with an approved cancer center for a period of no more than 1 year. The purpose of the International Cancer Center Visiting Physician Program is to provide to internationally respected and highly qualified physicians advanced education and training on cancer treatment techniques developed at an approved cancer center. The board may issue this temporary certificate in accordance with the restrictions set forth in this section.

(2) A temporary certificate for practice in an approved cancer center may be issued without examination to an individual who:

(a) Is a graduate of an accredited medical school or its equivalent, or is a graduate of a foreign medical school listed with the World Health Organization;

(b) Holds a valid and unencumbered license to practice medicine in another country;

(c) Has completed the application form adopted by the board and remitted a nonrefundable application fee not to exceed \$300;

(d) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under s. 455.624 or s. 458.331;

(e) Meets the financial responsibility requirements of s. 458.320; and

(f) Has been accepted for a course of training by a cancer center approved by the board.

(3) The board shall by rule establish qualifications for approval of cancer centers under this section, which at a minimum shall require the cancer center to be licensed under chapter 395 and have met the standards required to be a National Cancer Institute-designated cancer center. The board shall review the cancer centers approved under this section not less than annually to ascertain that the minimum requirements of this chapter and the rules adopted thereunder are being complied with. If it is determined that such minimum requirements are not being met by an approved cancer center, the board shall rescind its approval of that cancer center and no temporary certificate for that cancer center shall be valid until such time as the board reinstates its approval of that cancer center.

(4) A recipient of a temporary certificate for practice in an approved cancer center may use the certificate to practice for the duration of the course of training at the approved cancer center so long as the duration of the course does not exceed 1 year. If at any time the cancer center is no longer approved by the board, the temporary certificate shall expire and the recipient shall no longer be authorized to practice in this state.

(5) A recipient of a temporary certificate for practice in an approved cancer center is limited to practicing in facilities owned or operated by that approved cancer center and is limited to only practicing under the direct supervision of a physician who holds a valid, active, and unencumbered license to practice medicine in this state issued under this chapter or chapter 459.

(6) The board shall not issue a temporary certificate for practice in an approved cancer center to any physician who is under investigation in another jurisdiction for an act that would constitute a violation of this chapter or chapter 455 until such time as the investigation is complete and the physician is found innocent of all charges.

(7) A physician applying under this section is exempt from the requirements of ss. 455.565-455.5656. All other provisions of chapters 455 and 458 apply.

(8) In any year, the maximum number of temporary certificates that may be issued by the board under this section may not exceed 10 at each approved cancer center.

(9) The board may adopt rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.

(10) Nothing in this section may be construed to authorize a physician who is not licensed to practice medicine in this state to qualify for or otherwise engage in the practice of medicine in this state, except as provided in this section.

Section 37. Paragraph (i) of subsection (1), and subsection (4) of section 458.3145, Florida Statutes, are amended to read:

458.3145 Medical faculty certificate.—

(1) A medical faculty certificate may be issued without examination to an individual who:

(a) Is a graduate of an accredited medical school or its equivalent, or is a graduate of a foreign medical school listed with the World Health Organization;

(b) Holds a valid, current license to practice medicine in another jurisdiction;

(c) Has completed the application form and remitted a nonrefundable application fee not to exceed \$500;

(d) Has completed an approved residency or fellowship of at least 1 year or has received training which has been determined by the board to be equivalent to the 1-year residency requirement;

(e) Is at least 21 years of age;

(f) Is of good moral character;

(g) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under s. 458.331;

(h) For any applicant who has graduated from medical school after October 1, 1992, has completed, before entering medical school, the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which must include, at a minimum, courses in such fields as anatomy, biology, and chemistry; and

(i) Has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at:

1. The University of Florida,
2. The University of Miami,



3. The University of South Florida, ~~or~~
4. The Florida State University, or
54. The Mayo Medical School at the Mayo Clinic in Jacksonville, Florida.

(2) The certificate authorizes the holder to practice only in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals that are registered with the Board of Medicine as sites at which holders of medical faculty certificates will be practicing. Such certificate automatically expires when the holder's relationship with the medical school is terminated or after a period of 24 months, whichever occurs sooner, and is renewable every 2 years by a holder who applies to the board on a form prescribed by the board and provides certification by the dean of the medical school that the holder is a distinguished medical scholar and an outstanding practicing physician.

(3) The holder of a medical faculty certificate issued under this section has all rights and responsibilities prescribed by law for the holder of a license issued under s. 458.311, except as specifically provided otherwise by law. Such responsibilities include compliance with continuing medical education requirements as set forth by rule of the board. A hospital or ambulatory surgical center licensed under chapter 395, health maintenance organization certified under chapter 641, insurer as defined in s. 624.03, multiple-employer welfare arrangement as defined in s. 624.437, or any other entity in this state, in considering and acting upon an application for staff membership, clinical privileges, or other credentials as a health care provider, may not deny the application of an otherwise qualified physician for such staff membership, clinical privileges, or other credentials solely because the applicant is a holder of a medical faculty certificate under this section.

(4) In any year, the maximum number of extended medical faculty certificateholders as provided in subsection (2) may not exceed 15 persons at each institution named in subparagraphs (1)(i)1.-~~43~~. and at the facility named in s. 240.512 and may not exceed 5 persons at the institution named in subparagraph (1)(i)54.

5. Annual review of all such certificate recipients will be made by the deans of the accredited 4-year medical schools within this state and reported to the Board of Medicine.

(5) Notwithstanding subsection (1), any physician, when providing medical care or treatment in connection with the education of students, residents, or faculty at the request of the dean of an accredited medical school within this state or at the request of the medical director of a statutory teaching hospital as defined in s. 408.07, may do so upon registration with the board and demonstration of financial responsibility pursuant to s. 458.320(1) or (2) unless such physician is exempt under s. 458.320(5)(a). The performance of such medical care or treatment must be limited to a single period of time, which may not exceed 180 consecutive days, and must be rendered within a facility registered under subsection (2) or within a statutory teaching hospital as defined in s. 408.07. A registration fee not to exceed \$300, as set by the board, is required of each physician registered under this subsection.

However, no more than three physicians per year per institution may be registered under this subsection, and an exemption under this subsection may not be granted to a physician more than once in any given 5-year period.

Section 38. Subsection (5) is added to section 458.315, Florida Statutes, to read:

458.315 Temporary certificate for practice in areas of critical need.—Any physician who is licensed to practice in any other state, whose license is currently valid, and who pays an application fee of \$300 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians. A certificate may be issued to a physician who will be employed by a county health department, correctional facility, community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Services Act, or other entity that provides health care to indigents and that is approved by the State Health Officer. The Board of Medicine may issue this temporary certificate with the following restrictions:

(5) The application fee and all licensure fees, including neurological injury compensation assessments, shall be waived for those persons obtaining a temporary certificate to practice in areas of critical need for the purpose of providing volunteer, uncompensated care for low-income Floridians. The applicant must submit an affidavit from the employing agency or institution stating that the physician will not receive any compensation for any service involving the practice of medicine.

Section 39. Section 458.345, Florida Statutes, is amended to read:

458.345 Registration of resident physicians, interns, and fellows; list of hospital employees; prescribing of medicinal drugs; penalty.—

(1) Any person desiring to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training which leads to subspecialty board certification in this state, or any person desiring to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training in a teaching hospital in this state as defined in s. 408.07(44) or s. 395.805(2), who does not hold a valid, active license issued under this chapter shall apply to the department to be registered and shall remit a fee not to exceed \$300 as set by the board. The department shall register any applicant the board certifies has met the following requirements:

(a) Is at least 21 years of age.

(b) Has not committed any act or offense within or without the state which would constitute the basis for refusal to certify an application for licensure pursuant to s. 458.331.

(c) Is a graduate of a medical school or college as specified in s. 458.311(1)(f).

(2) The board shall not certify to the department for registration any applicant who is under investigation in any state or jurisdiction for an act

which would constitute the basis for imposing a disciplinary penalty specified in s. 458.331(2)(b) until such time as the investigation is completed, at which time the provisions of s. 458.331 shall apply.

(3) Every hospital or teaching hospital employing or utilizing the services of a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training registered under this section which leads to subspecialty board certification shall designate a person who shall, on dates designated by the board, in consultation with the department, furnish the department with a list of such ~~the~~ hospital's employees and such other information as the board may direct. The chief executive officer of each such hospital shall provide the executive director of the board with the name, title, and address of the person responsible for furnishing such reports.

(4) Registration under this section shall automatically expire after 2 years without further action by the board or the department unless an application for renewal is approved by the board. No person registered under this section may be employed or utilized as a house physician or act as a resident physician, an assistant resident physician, an intern, or a fellow in fellowship training ~~which leads to a subspecialty board certification~~ in a hospital or teaching hospital of this state for more than 2 years without a valid, active license or renewal of registration under this section. Requirements for renewal of registration shall be established by rule of the board. An application fee not to exceed \$300 as set by the board shall accompany the application for renewal, except that resident physicians, assistant resident physicians, interns, and fellows in fellowship training registered under this section which leads to subspecialty board certification shall be exempt from payment of any renewal fees.

(5) Notwithstanding any provision of this section or s. 120.52 to the contrary, any person who is registered under this section is subject to the provisions of s. 458.331.

(6) A person registered as a resident physician under this section may in the normal course of his or her employment prescribe medicinal drugs described in schedules set out in chapter 893 when:

(a) The person prescribes such medicinal drugs through use of a Drug Enforcement Administration number issued to the hospital or teaching hospital by which the person is employed or at which the person's services are used;

(b) The person is identified by a discrete suffix to the identification number issued to such ~~the~~ hospital; and

(c) The use of the institutional identification number and individual suffixes conforms to the requirements of the federal Drug Enforcement Administration.

(7) Any person willfully violating this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) The board shall promulgate rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.

Section 40. Subsection (3) of section 458.348, Florida Statutes, is created to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(3) PROTOCOLS REQUIRING DIRECT SUPERVISION.—All protocols relating to electrolysis or electrology using laser or light-based hair removal or reduction by persons other than physicians licensed under this chapter or chapter 459 shall require the person performing such service to be appropriately trained and work only under the direct supervision and responsibility of a physician licensed under this chapter or chapter 459.

Section 41. Section 459.021, Florida Statutes, is amended to read:

459.021 Registration of resident physicians, interns, and fellows; list of hospital employees; penalty.—

(1) Any person who holds a degree of Doctor of Osteopathic Medicine from a college of osteopathic medicine recognized and approved by the American Osteopathic Association who desires to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training which leads to subspecialty board certification in this state, or any person desiring to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training in a teaching hospital in this state as defined in s. 408.07(44) or s. 395.805(2), who does not hold an active license issued under this chapter shall apply to the department to be registered, on an application provided by the department, within 30 days of commencing such a training program and shall remit a fee not to exceed \$300 as set by the board.

(2) Any person required to be registered under this section shall renew such registration annually. Such registration shall be terminated upon the registrant's receipt of an active license issued under this chapter. No person shall be registered under this section for an aggregate of more than 5 years, unless additional years are approved by the board.

(3) Every hospital or teaching hospital having employed or contracted with or utilized the services of a person who holds a degree of Doctor of Osteopathic Medicine from a college of osteopathic medicine recognized and approved by the American Osteopathic Association as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training registered under this section ~~which leads to subspecialty board certification~~ shall designate a person who shall furnish, on dates designated by the board, in consultation with the department, to the department a list of all such persons who have served in such the hospital during the preceding 6-month period. The chief executive officer of each such hospital shall provide the executive director of the board with the name, title, and address of the person responsible for filing such reports.

(4) The registration may be revoked or the department may refuse to issue any registration for any cause which would be a ground for its revocation or refusal to issue a license to practice osteopathic medicine, as well as on the following grounds:

(a) Omission of the name of an intern, resident physician, assistant resident physician, house physician, or fellow in fellowship training from the list of employees required by subsection (3) to be furnished to the department by the hospital or teaching hospital served by the employee.

(b) Practicing osteopathic medicine outside of a bona fide hospital training program.

(5) It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for any hospital or teaching hospital, and also for the superintendent, administrator, and other person or persons having administrative authority in such a hospital:

(a) To employ the services in such ~~the~~ hospital of any person listed in subsection (3), unless such person is registered with the department under the law or the holder of a license to practice osteopathic medicine under this chapter.

(b) To fail to furnish to the department the list and information required by subsection (3).

(6) Any person desiring registration pursuant to this section shall meet all the requirements of s. 459.0055.

(7) The board shall promulgate rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.

(8) Notwithstanding any provision of this section or s. 120.52 to the contrary, any person who is registered under this section is subject to the provisions of s. 459.015.

(9) A person registered as a resident physician under this section may in the normal course of his or her employment prescribe medicinal drugs described in schedules set out in chapter 893 when:

(a) The person prescribes such medicinal drugs through use of a Drug Enforcement Administration number issued to the hospital or teaching hospital by which the person is employed or at which the person's services are used;

(b) The person is identified by a discrete suffix to the identification number issued to such ~~the~~ hospital; and

(c) The use of the institutional identification number and individual suffixes conforms to the requirements of the federal Drug Enforcement Administration.

Section 42. Paragraph (d) is added to subsection (9) of section 458.347, Florida Statutes, to read:

458.347 Physician assistants.—

(9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on Physician Assistants is created within the department.

(a) The council shall consist of five members appointed as follows:

1. The chairperson of the Board of Medicine shall appoint three members who are physicians and members of the Board of Medicine. One of the physicians must supervise a physician assistant in the physician's practice.

2. The chairperson of the Board of Osteopathic Medicine shall appoint one member who is a physician and a member of the Board of Osteopathic Medicine.

3. The secretary of the department or his or her designee shall appoint a fully licensed physician assistant licensed under this chapter or chapter 459.

(b) Two of the members appointed to the council must be physicians who supervise physician assistants in their practice. Members shall be appointed to terms of 4 years, except that of the initial appointments, two members shall be appointed to terms of 2 years, two members shall be appointed to terms of 3 years, and one member shall be appointed to a term of 4 years, as established by rule of the boards. Council members may not serve more than two consecutive terms. The council shall annually elect a chairperson from among its members.

(c) The council shall:

1. Recommend to the department the licensure of physician assistants.

2. Develop all rules regulating the use of physician assistants by physicians under this chapter and chapter 459, except for rules relating to the formulary developed under paragraph (4)(f). The council shall also develop rules to ensure that the continuity of supervision is maintained in each practice setting. The boards shall consider adopting a proposed rule developed by the council at the regularly scheduled meeting immediately following the submission of the proposed rule by the council. A proposed rule submitted by the council may not be adopted by either board unless both boards have accepted and approved the identical language contained in the proposed rule. The language of all proposed rules submitted by the council must be approved by both boards pursuant to each respective board's guidelines and standards regarding the adoption of proposed rules. If either board rejects the council's proposed rule, that board must specify its objection to the council with particularity and include any recommendations it may have for the modification of the proposed rule.

3. Make recommendations to the boards regarding all matters relating to physician assistants.

4. Address concerns and problems of practicing physician assistants in order to improve safety in the clinical practices of licensed physician assistants.

(d) When the Council finds that an applicant for licensure has failed to meet, to the Council's satisfaction, each of the requirements for licensure set forth in this section, the Council may enter an order to:

1. Refuse to certify the applicant for licensure;
2. Approve the applicant for licensure with restrictions on the scope of practice or license; or
3. Approve the applicant for conditional licensure. Such conditions may include placement of the licensee on probation for a period of time and subject to such conditions as the Council may specify, including but not limited to, requiring the licensee to undergo treatment, to attend continuing education courses, to work under the direct supervision of a physician licensed in this state, or to take corrective action.

Section 43. Paragraph (d) is added to subsection (9) of section 459.022, Florida Statutes, to read:

459.022 Physician assistants.—

(9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on Physician Assistants is created within the department.

(a) The council shall consist of five members appointed as follows:

1. The chairperson of the Board of Medicine shall appoint three members who are physicians and members of the Board of Medicine. One of the physicians must supervise a physician assistant in the physician's practice.

2. The chairperson of the Board of Osteopathic Medicine shall appoint one member who is a physician and a member of the Board of Osteopathic Medicine.

3. The secretary of the department or her or his designee shall appoint a fully licensed physician assistant licensed under chapter 458 or this chapter.

(b) Two of the members appointed to the council must be physicians who supervise physician assistants in their practice. Members shall be appointed to terms of 4 years, except that of the initial appointments, two members shall be appointed to terms of 2 years, two members shall be appointed to terms of 3 years, and one member shall be appointed to a term of 4 years, as established by rule of the boards. Council members may not serve more than two consecutive terms. The council shall annually elect a chairperson from among its members.

(c) The council shall:

1. Recommend to the department the licensure of physician assistants.
2. Develop all rules regulating the use of physician assistants by physicians under chapter 458 and this chapter, except for rules relating to the formulary developed under s. 458.347(4)(f). The council shall also develop

rules to ensure that the continuity of supervision is maintained in each practice setting. The boards shall consider adopting a proposed rule developed by the council at the regularly scheduled meeting immediately following the submission of the proposed rule by the council. A proposed rule submitted by the council may not be adopted by either board unless both boards have accepted and approved the identical language contained in the proposed rule. The language of all proposed rules submitted by the council must be approved by both boards pursuant to each respective board's guidelines and standards regarding the adoption of proposed rules. If either board rejects the council's proposed rule, that board must specify its objection to the council with particularity and include any recommendations it may have for the modification of the proposed rule.

3. Make recommendations to the boards regarding all matters relating to physician assistants.

4. Address concerns and problems of practicing physician assistants in order to improve safety in the clinical practices of licensed physician assistants.

(d) When the Council finds that an applicant for licensure has failed to meet, to the Council's satisfaction, each of the requirements for licensure set forth in this section, the Council may enter an order to:

1. Refuse to certify the applicant for licensure;

2. Approve the applicant for licensure with restrictions on the scope of practice or license; or

3. Approve the applicant for conditional licensure. Such conditions may include placement of the licensee on probation for a period of time and subject to such conditions as the Council may specify, including but not limited to, requiring the licensee to undergo treatment, to attend continuing education courses, to work under the direct supervision of a physician licensed in this state, or to take corrective action.

Section 44. The amendment of s. 455.637, Florida Statutes, by this act applies to offenses committed on or after the effective date of such section.

Section 45. Section 455.641, Florida Statutes, is repealed.

Section 46. For the purpose of incorporating the amendment to section 455.637, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

455.574 Department of Health; examinations.—

(1)

(d) Each board, or the department when there is no board, shall adopt rules regarding the security and monitoring of examinations. The department shall implement those rules adopted by the respective boards. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.637 to seek fines and injunctive relief against



an examinee who violates the provisions of s. 455.577 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.

468.1295 Disciplinary proceedings.—

(1) The following acts constitute grounds for both disciplinary actions as set forth in subsection (2) and cease and desist or other related actions by the department as set forth in s. 455.637:

(a) Procuring or attempting to procure a license by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(b) Having a license revoked, suspended, or otherwise acted against, including denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of speech-language pathology or audiology.

(d) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or records required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such report or record shall include only those reports or records which are signed in one's capacity as a licensed speech-language pathologist or audiologist.

(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(f) Being proven guilty of fraud or deceit or of negligence, incompetency, or misconduct in the practice of speech-language pathology or audiology.

(g) Violating a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the board or department.

(h) Practicing with a revoked, suspended, inactive, or delinquent license.

(i) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful.

(j) Showing or demonstrating or, in the event of sale, delivery of a product unusable or impractical for the purpose represented or implied by such action.

(k) Failing to submit to the board on an annual basis, or such other basis as may be provided by rule, certification of testing and calibration of such

equipment as designated by the board and on the form approved by the board.

(l) Aiding, assisting, procuring, employing, or advising any licensee or business entity to practice speech-language pathology or audiology contrary to this part, part II of chapter 455, or any rule adopted pursuant thereto.

(m) Violating any provision of this part or part II of chapter 455 or any rule adopted pursuant thereto.

(n) Misrepresenting the professional services available in the fitting, sale, adjustment, service, or repair of a hearing aid, or using any other term or title which might connote the availability of professional services when such use is not accurate.

(o) Representing, advertising, or implying that a hearing aid or its repair is guaranteed without providing full disclosure of the identity of the guarantor; the nature, extent, and duration of the guarantee; and the existence of conditions or limitations imposed upon the guarantee.

(p) Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle and that in many cases of hearing loss this type of instrument may not be suitable.

(q) Stating or implying that the use of any hearing aid will improve or preserve hearing or prevent or retard the progression of a hearing impairment or that it will have any similar or opposite effect.

(r) Making any statement regarding the cure of the cause of a hearing impairment by the use of a hearing aid.

(s) Representing or implying that a hearing aid is or will be "custom-made," "made to order," or "prescription-made," or in any other sense specially fabricated for an individual, when such is not the case.

(t) Canvassing from house to house or by telephone, either in person or by an agent, for the purpose of selling a hearing aid, except that contacting persons who have evidenced an interest in hearing aids, or have been referred as in need of hearing aids, shall not be considered canvassing.

(u) Failing to notify the department in writing of a change in current mailing and place-of-practice address within 30 days after such change.

(v) Failing to provide all information as described in ss. 468.1225(5)(b), 468.1245(1), and 468.1246.

(w) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(x) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee or

certificateholder knows, or has reason to know, the licensee or certificateholder is not competent to perform.

(y) Aiding, assisting, procuring, or employing any unlicensed person to practice speech-language pathology or audiology.

(z) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization to perform them.

(aa) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 468.1296.

(bb) Being unable to practice the profession for which he or she is licensed or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness, drunkenness, or use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the secretary, his or her designee, or the board that probable cause exists to believe that the licensee or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee or certificateholder to submit to a mental or physical examination by a physician, psychologist, clinical social worker, marriage and family therapist, or mental health counselor designated by the department or board. If the licensee or certificateholder refuses to comply with the department's order directing the examination, such order may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee or certificateholder resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed or certified with reasonable skill and safety to patients.

#### 484.014 Disciplinary actions.—

(1) The following acts relating to the practice of opticianry shall be grounds for both disciplinary action against an optician as set forth in this section and cease and desist or other related action by the department as set forth in s. 455.637 against any person operating an optical establishment who engages in, aids, or abets any such violation:

(a) Procuring or attempting to procure a license by misrepresentation, bribery, or fraud or through an error of the department or the board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, willfully impeding or obstructing such filing, or

inducing another person to do so. Such reports or records shall include only those which the person is required to make or file as an optician.

(d) Failing to make fee or price information readily available by providing such information upon request or upon the presentation of a prescription.

(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(f) Fraud or deceit, or negligence, incompetency, or misconduct, in the authorized practice of opticianry.

(g) Violation or repeated violation of this part or of part II of chapter 455 or any rules promulgated pursuant thereto.

(h) Practicing with a revoked, suspended, inactive, or delinquent license.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(j) Violation of any provision of s. 484.012.

(k) Conspiring with another licensee or with any person to commit an act, or committing an act, which would coerce, intimidate, or preclude another licensee from lawfully advertising her or his services.

(l) Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

(m) Failing to keep written prescription files.

(n) Willfully failing to report any person who the licensee knows is in violation of this part or of rules of the department or the board.

(o) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(p) Gross or repeated malpractice.

(q) Permitting any person not licensed as an optician in this state to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices which are part of the practice of opticianry.

(r) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, in a court of this state or other jurisdiction, a crime which relates to the ability to practice opticianry or to the practice of opticianry.

(s) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of Florida law or rules regulating opticianry.

(t) Being unable to practice opticianry with reasonable skill and safety by reason of illness or use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An optician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of opticianry with reasonable skill and safety to her or his customers.

484.056 Disciplinary proceedings.—

(1) The following acts relating to the practice of dispensing hearing aids shall be grounds for both disciplinary action against a hearing aid specialist as set forth in this section and cease and desist or other related action by the department as set forth in s. 455.637 against any person owning or operating a hearing aid establishment who engages in, aids, or abets any such violation:

(a) Violation of any provision of s. 455.624(1), s. 484.0512, or s. 484.053.

(b) Attempting to procure a license to dispense hearing aids by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(c) Having a license to dispense hearing aids revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of dispensing hearing aids or the ability to practice dispensing hearing aids, including violations of any federal laws or regulations regarding hearing aids.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those reports or records which are signed in one's capacity as a licensed hearing aid specialist.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Proof that the licensee is guilty of fraud or deceit or of negligence, incompetency, or misconduct in the practice of dispensing hearing aids.

(h) Violation or repeated violation of this part or of part II of chapter 455, or any rules promulgated pursuant thereto.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failure to comply with a lawfully issued subpoena of the board or department.

(j) Practicing with a revoked, suspended, inactive, or delinquent license.

(k) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful.

(l) Showing or demonstrating, or, in the event of sale, delivery of, a product unusable or impractical for the purpose represented or implied by such action.

(m) Misrepresentation of professional services available in the fitting, sale, adjustment, service, or repair of a hearing aid, or use of the terms "doctor," "clinic," "clinical," "medical audiologist," "clinical audiologist," "research audiologist," or "audiologic" or any other term or title which might connote the availability of professional services when such use is not accurate.

(n) Representation, advertisement, or implication that a hearing aid or its repair is guaranteed without providing full disclosure of the identity of the guarantor; the nature, extent, and duration of the guarantee; and the existence of conditions or limitations imposed upon the guarantee.

(o) Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle and that in many cases of hearing loss this type of instrument may not be suitable.

(p) Making any predictions or prognostications as to the future course of a hearing impairment, either in general terms or with reference to an individual person.

(q) Stating or implying that the use of any hearing aid will improve or preserve hearing or prevent or retard the progression of a hearing impairment or that it will have any similar or opposite effect.

(r) Making any statement regarding the cure of the cause of a hearing impairment by the use of a hearing aid.

(s) Representing or implying that a hearing aid is or will be "custom-made," "made to order," or "prescription-made" or in any other sense specially fabricated for an individual person when such is not the case.

(t) Canvassing from house to house or by telephone either in person or by an agent for the purpose of selling a hearing aid, except that contacting persons who have evidenced an interest in hearing aids, or have been referred as in need of hearing aids, shall not be considered canvassing.

(u) Failure to submit to the board on an annual basis, or such other basis as may be provided by rule, certification of testing and calibration of audiometric testing equipment on the form approved by the board.

(v) Failing to provide all information as described in s. 484.051(1).

(w) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

Section 47. Paragraphs (a) and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
(a) LEVEL 1		
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
322.212(5)(a)	3rd	False application for driver's license or identification card.
370.13(3)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.
372.663(1)	3rd	Poach any alligator or crocodilia.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.

Florida Statute	Felony Degree	Description
458.327(1)(a)	3rd	<del>Unlicensed practice of medicine.</del>
466.026(1)(a)	3rd	<del>Unlicensed practice of dentistry or dental hygiene.</del>
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05 (2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.



Florida Statute	Felony Degree	Description
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; “common offender” as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.
<u>455.637(2)</u>	<u>3rd</u>	<u>Practicing a health care profession without a license.</u>
<u>455.637(2)</u>	<u>2nd</u>	<u>Practicing a health care profession without a license which results in serious bodily injury.</u>
<u>458.327(1)</u>	<u>3rd</u>	<u>Practicing medicine without a license.</u>
<u>459.013(1)</u>	<u>3rd</u>	<u>Practicing osteopathic medicine without a license.</u>
<u>460.411(1)</u>	<u>3rd</u>	<u>Practicing chiropractic medicine without a license.</u>

Florida Statute	Felony Degree	Description
<u>461.012(1)</u>	<u>3rd</u>	<u>Practicing podiatric medicine without a license.</u>
<u>462.17</u>	<u>3rd</u>	<u>Practicing naturopathy without a license.</u>
<u>463.015(1)</u>	<u>3rd</u>	<u>Practicing optometry without a license.</u>
<u>464.016(1)</u>	<u>3rd</u>	<u>Practicing nursing without a license.</u>
<u>465.015(2)</u>	<u>3rd</u>	<u>Practicing pharmacy without a license.</u>
<u>466.026(1)</u>	<u>3rd</u>	<u>Practicing dentistry or dental hygiene without a license.</u>
<u>467.201</u>	<u>3rd</u>	<u>Practicing midwifery without a license.</u>
<u>468.366</u>	<u>3rd</u>	<u>Delivering respiratory care services without a license.</u>
<u>483.828(1)</u>	<u>3rd</u>	<u>Practicing as clinical laboratory personnel without a license.</u>
<u>483.901(9)</u>	<u>3rd</u>	<u>Practicing medical physics without a license.</u>
<u>484.053</u>	<u>3rd</u>	<u>Dispensing hearing aids without a license.</u>
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

Florida Statute	Felony Degree	Description
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

Florida Statute	Felony Degree	Description
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b)) within 1,000 feet of a child care facility or school.
893.13(1)(e)	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b), within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 50 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

Florida Statute	Felony Degree	Description
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

Section 48. Subsection (1) of section 458.327, Florida Statutes, reads:

458.327 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of medicine or an attempt to practice medicine without a license to practice in Florida.

(b) The use or attempted use of a license which is suspended or revoked to practice medicine.

(c) Attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

Section 49. Subsection (1) of section 459.013, Florida Statutes, reads:

459.013 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of osteopathic medicine, or an attempt to practice osteopathic medicine, without an active license or certificate issued pursuant to this chapter.

(b) The practice of osteopathic medicine by a person holding a limited license, osteopathic faculty certificate, or other certificate issued under this chapter beyond the scope of practice authorized for such licensee or certificateholder.

(c) Attempting to obtain or obtaining a license to practice osteopathic medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as an osteopathic medical practitioner or osteopathic medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

Section 50. Subsection (1) of section 460.411, Florida Statutes, reads:

460.411 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice chiropractic medicine without an active license or with a license fraudulently obtained.

(b) Using or attempting to use a license to practice chiropractic medicine which has been suspended or revoked.

Section 51. Subsection (1) of section 461.012, Florida Statutes, reads:

461.012 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice podiatric medicine without an active license or with a license fraudulently obtained.

(b) Advertising podiatric services without an active license obtained pursuant to this chapter or with a license fraudulently obtained.

(c) Using or attempting to use a license to practice podiatric medicine which has been suspended or revoked.

Section 52. Section 462.17, Florida Statutes, reads:

462.17 Penalty for offenses relating to naturopathy.—Any person who shall:

(1) Sell, fraudulently obtain, or furnish any naturopathic diploma, license, record, or registration or aid or abet in the same;

(2) Practice naturopathy under the cover of any diploma, license, record, or registration illegally or fraudulently obtained or secured or issued unlawfully or upon fraudulent representations;

(3) Advertise to practice naturopathy under a name other than her or his own or under an assumed name;

(4) Falsely impersonate another practitioner of a like or different name;

(5) Practice or advertise to practice naturopathy or use in connection with her or his name any designation tending to imply or to designate the person as a practitioner of naturopathy without then being lawfully licensed and authorized to practice naturopathy in this state; or

(6) Practice naturopathy during the time her or his license is suspended or revoked

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 53. Subsection (1) of section 463.015, Florida Statutes, reads:

463.015 Violations and penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice optometry without a valid active license issued pursuant to this chapter.

(b) Attempting to obtain or obtaining a license to practice optometry by fraudulent misrepresentation.

(c) Using or attempting to use a license to practice optometry which has been suspended or revoked.

Section 54. Subsection (1) of section 464.016, Florida Statutes, reads:

464.016 Violations and penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing advanced or specialized, professional or practical nursing, as defined in this chapter, unless holding an active license or certificate to do so.

(b) Using or attempting to use a license or certificate which has been suspended or revoked.

(c) Knowingly employing unlicensed persons in the practice of nursing.

(d) Obtaining or attempting to obtain a license or certificate under this chapter by misleading statements or knowing misrepresentation.

Section 55. Subsection (2) of section 465.015, Florida Statutes, reads:

465.015 Violations and penalties.—

(2) It is unlawful for any person:

(a) To make a false or fraudulent statement, either for herself or himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.

(b) To fill, compound, or dispense prescriptions or to dispense medicinal drugs if such person does not hold an active license as a pharmacist in this state, is not registered as an intern in this state, or is an intern not acting under the direct and immediate personal supervision of a licensed pharmacist.

(c) To sell or dispense drugs as defined in s. 465.003(8) without first being furnished with a prescription.

(d) To sell samples or complimentary packages of drug products.

Section 56. Subsection (1) of section 466.026, Florida Statutes, reads:

466.026 Prohibitions; penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing dentistry or dental hygiene unless the person has an appropriate, active license issued by the department pursuant to this chapter.

(b) Using or attempting to use a license issued pursuant to this chapter which license has been suspended or revoked.

(c) Knowingly employing any person to perform duties outside the scope allowed such person under this chapter or the rules of the board.

(d) Giving false or forged evidence to the department or board for the purpose of obtaining a license.

(e) Selling or offering to sell a diploma conferring a degree from a dental college or dental hygiene school or college, or a license issued pursuant to this chapter, or procuring such diploma or license with intent that it shall be used as evidence of that which the document stands for, by a person other than the one upon whom it was conferred or to whom it was granted.

Section 57. Section 467.201, Florida Statutes, reads:

467.201 Violations and penalties.—Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(1) Practicing midwifery, unless holding an active license to do so.

(2) Using or attempting to use a license which has been suspended or revoked.

(3) The willful practice of midwifery by a student midwife without a preceptor present, except in an emergency.

(4) Knowingly allowing a student midwife to practice midwifery without a preceptor present, except in an emergency.

(5) Obtaining or attempting to obtain a license under this chapter through bribery or fraudulent misrepresentation.

(6) Using the name or title “midwife” or “licensed midwife” or any other name or title which implies that a person is licensed to practice midwifery, unless such person is duly licensed as provided in this chapter.

(7) Knowingly concealing information relating to the enforcement of this chapter or rules adopted pursuant thereto.

Section 58. Section 468.366, Florida Statutes, reads:



**468.366 Penalties for violations.—**

(1) It is a violation of law for any person, including any firm, association, or corporation, to:

(a) Sell or fraudulently obtain, attempt to obtain, or furnish to any person a diploma, license, or record, or aid or abet in the sale, procurement, or attempted procurement thereof.

(b) Deliver respiratory care services, as defined by this part or by rule of the board, under cover of any diploma, license, or record that was illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation.

(c) Deliver respiratory care services, as defined by this part or by rule of the board, unless such person is duly licensed to do so under the provisions of this part or unless such person is exempted pursuant to s. 468.368.

(d) Use, in connection with his or her name, any designation tending to imply that he or she is a respiratory care practitioner or a respiratory therapist, duly licensed under the provisions of this part, unless he or she is so licensed.

(e) Advertise an educational program as meeting the requirements of this part, or conduct an educational program for the preparation of respiratory care practitioners or respiratory therapists, unless such program has been approved by the board.

(f) Knowingly employ unlicensed persons in the delivery of respiratory care services, unless exempted by this part.

(g) Knowingly conceal information relative to any violation of this part.

(2) Any violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 59. Subsection (1) of section 483.828, Florida Statutes, reads:

**483.828 Penalties for violations.—**

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing as clinical laboratory personnel without an active license.

(b) Using or attempting to use a license to practice as clinical laboratory personnel which is suspended or revoked.

(c) Attempting to obtain or obtaining a license to practice as clinical laboratory personnel by knowing misrepresentation.

Section 60. Subsection (9) of section 483.901, Florida Statutes, reads:

**483.901 Medical physicists; definitions; licensure.—**

(9) PENALTY FOR VIOLATIONS.—It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to:

(a) Practice or attempt to practice medical physics or hold oneself out to be a licensed medical physicist without holding an active license.

(b) Practice or attempt to practice medical physics under a name other than one's own.

(c) Use or attempt to use a revoked or suspended license or the license of another.

Section 61. Section 484.053, Florida Statutes, reads:

484.053 Prohibitions; penalties.—

(1) A person may not:

(a) Practice dispensing hearing aids unless the person is a licensed hearing aid specialist;

(b) Use the name or title "hearing aid specialist" when the person has not been licensed under this part;

(c) Present as her or his own the license of another;

(d) Give false, incomplete, or forged evidence to the board or a member thereof for the purposes of obtaining a license;

(e) Use or attempt to use a hearing aid specialist license that is delinquent or has been suspended, revoked, or placed on inactive status;

(f) Knowingly employ unlicensed persons in the practice of dispensing hearing aids; or

(g) Knowingly conceal information relative to violations of this part.

(2) Any person who violates any of the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) If a person licensed under this part allows the sale of a hearing aid by an unlicensed person not registered as a trainee or fails to comply with the requirements of s. 484.0445(2) relating to supervision of trainees, the board shall, upon determination of that violation, order the full refund of moneys paid by the purchaser upon return of the hearing aid to the seller's place of business.

Section 62. Subsection (1) of section 457.102, Florida Statutes, is amended to read:

457.102 Definitions.—As used in this chapter:

(1) "Acupuncture" means a form of primary health care, based on traditional Chinese medical concepts and modern oriental medical techniques,

that employs acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture shall include, but not be limited to, the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body and the use of electroacupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies, as defined by board rule.

Section 63. Section 457.105, Florida Statutes, is amended to read:

457.105 Licensure qualifications and fees.—

(1) It is unlawful for any person to practice acupuncture in this state unless such person has been licensed by the board, is in a board-approved course of study, or is otherwise exempted by this chapter.

(2) A person may become licensed to practice acupuncture if the person applies to the department and:

(a) Is 21 18 years of age or older, has good moral character, and has the ability to communicate in English, which is demonstrated by having passed the national written examination in English or, if such examination was passed in a foreign language, by also having passed a nationally recognized English proficiency examination;

(b) Has completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment in an authorized 3-year course of study in acupuncture and oriental medicine, and has completed a 3-year course of study in acupuncture and oriental medicine, and effective July 31, 2001, a 4-year course of study in acupuncture and oriental medicine, which meets standards established by the board by rule, which standards include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, western pathology, western biomedical terminology, first aid, and cardiopulmonary resuscitation (CPR). However, any person who enrolled in an authorized course of study in acupuncture before August 1, 1997, must have completed only a 2-year course of study which meets standards established by the board by rule, which standards must include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology;

(c) Has successfully completed a board-approved national certification process, is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine. At the request of any applicant, oriental nomenclature for the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice modern and traditional acupuncture and oriental medicine, covering diagnostic and treatment techniques and procedures; and

(d) Pays the required fees set by the board by rule not to exceed the following amounts:

1. Examination fee: \$500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

2. Application fee: \$300.

3. Reexamination fee: \$500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

4. Initial biennial licensure fee: \$400, if licensed in the first half of the biennium, and \$200, if licensed in the second half of the biennium.

Section 64. Subsection (1) of section 457.107, Florida Statutes, is amended to read:

457.107 Renewal of licenses; continuing education.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board by rule, not to exceed \$500 \$700.

Section 65. Section 483.824, Florida Statutes, is amended to read:

483.824 Qualifications of clinical laboratory director.—A clinical laboratory director must have 4 years of clinical laboratory experience with 2 years of experience in the specialty to be directed or be nationally board certified in the specialty to be directed, and must meet one of the following requirements:

(1) Be a physician licensed under chapter 458 or chapter 459;

(2) Hold an earned doctoral degree in a chemical, physical, or biological science from a regionally accredited institution and maintain national certification requirements equal to those required by the federal Health Care Financing Administration be nationally-certified; or

(3) For the subspecialty of oral pathology, be a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466.

Section 66. February 6th of each year is designated Florida Alzheimer's Disease Day.

Section 67. Subsection (11) of section 641.51, Florida Statutes, is created to read:

641.51 Quality assurance program; second medical opinion requirement.—

(11) If a contracted primary care physician, licensed under Chapter 458 or Chapter 459, and the organization determine that a subscriber requires examination by a licensed ophthalmologist for medically necessary, contractually covered services, then the organization shall authorize the contracted primary care physician to send the subscriber to a contracted licensed ophthalmologist.

Section 68. This act shall not be construed to prohibit anyone from seeking medical information on the Internet from any site.

Section 69. Effective upon this act becoming a law:

(1) Any funds appropriated in Committee Substitute for House Bill 2339, enacted in the 2000 Regular Session of the Legislature, for the purpose of a review of current mandated health coverages shall revert to the fund from which appropriated, and such review may not be conducted.

(2) Notwithstanding any provision to the contrary contained in Committee Substitute for House Bill 2339, enacted in the 2000 Regular Session of the Legislature, the establishment of a specialty hospital offering a range of medical services restricted to a defined age or gender group of the population or a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical illnesses or disorders, through the transfer of beds and services from an existing hospital in the same county, is not exempt from the provisions of section 408.036(1), Florida Statutes.

Section 70. Paragraph (n) of subsection (3), paragraph (c) of subsection (5), and paragraphs (b) and (d) of subsection (6) of section 627.6699, Florida Statutes, are amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(n) “Modified community rating” means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(j); claims experience, health status, or duration of coverage as permitted under subparagraph (6)(b)5.; and administrative and acquisition expenses as permitted under subparagraph (6)(b)6.

(5) AVAILABILITY OF COVERAGE.—

(c) Every small employer carrier must, as a condition of transacting business in this state:

1. Beginning July 1, 2000, January 1, 1994, offer and issue all small employer health benefit plans on a guaranteed-issue basis to every eligible small employer, with 2 3 to 50 eligible employees, that elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

2. Beginning July 1, 2000, and until July 31, 2001, offer and issue basic and standard small employer health benefit plans on a guaranteed-issue basis to every eligible small employer which is eligible for guaranteed renewal, has less than two eligible employees, is not formed primarily for the

purpose of buying health insurance, elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may be added only to the standard benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section. For purposes of this subparagraph, a person, his or her spouse, and his or her dependent children shall constitute a single eligible employee if that person and spouse are employed by the same small employer and either one has a normal work week of less than 25 hours.

~~3.2.~~ Beginning August 1, 2001 ~~April 15, 1994~~, offer and issue basic and standard small employer health benefit plans on a guaranteed-issue basis, during a 31-day open enrollment period of August 1 through August 31 of each year, to every eligible small employer, with ~~less than one or two~~ less than one or two eligible employees, which small employer is not formed primarily for the purpose of buying health insurance and which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. Coverage provided under this subparagraph shall begin on October 1 of the same year as the date of enrollment, unless the small employer carrier and the small employer agree to a different date. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section. For purposes of this subparagraph, a person, his or her spouse, and his or her dependent children constitute a single eligible employee if that person and spouse are employed by the same small employer and either that person or his or her spouse has a normal work week of less than 25 hours.

~~4.3.— Offer to eligible small employers the standard and basic health benefit plans. This paragraph subparagraph does not limit a carrier's ability to offer other health benefit plans to small employers if the standard and basic health benefit plans are offered and rejected.~~

#### (6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(b) For all small employer health benefit plans that are subject to this section and are issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans subject to this section are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer must be determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(j) and in which the premium may be adjusted as permitted by subparagraphs 5. and 6.

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to department review and approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed. However, a small employer carrier may modify the rate one time prior to 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers covered under the policy if:

a. The carrier discloses to the employer in a clear and conspicuous manner the date of the first renewal and the fact that the premium may increase on or after that date.

b. The insurer demonstrates to the department that efficiencies in administration are achieved and reflected in the rates charged to small employers covered under the policy.

4. A carrier may issue a group health insurance policy to a small employer health alliance or other group association with rates that reflect a premium credit for expense savings attributable to administrative activities being performed by the alliance or group association if such expense savings are specifically documented in the insurer's rate filing and are approved by the department. Any such credit may not be based on different morbidity assumptions or on any other factor related to the health status or claims experience of any person covered under the policy. Nothing in this subparagraph exempts an alliance or group association from licensure for any activities that require licensure under the Insurance Code. A carrier issuing a group health insurance policy to a small-employer health alliance or other group association shall allow any properly licensed and appointed agent of that carrier to market and sell the small-employer health alliance or other group association policy. Such agent shall be paid the usual and customary commission paid to any agent selling the policy. Carriers participating in the alliance program, in accordance with ss. 408.70-408.706, may apply a different community rate to business written in that program.

5. Any adjustments in rates for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. For a small employer's policy, such adjustments may not result in a rate for the small employer which deviates more than 15 percent from the carrier's approved rate. Any such adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer. A small employer carrier may make an adjustment to a small employer's renewal premium, not to exceed 10 percent annually, due to the claims experience, health status, or duration of coverage of the employees or dependents of the small employer. Semiannually small group carriers shall report information on forms adopted by rule by the department to enable the department to monitor the relationship of aggregate adjusted premiums actually charged policyholders by each carrier to the premiums that would have been charged by application of the carrier's approved modified community rates. If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by application of the approved modified community rate by 5 percent for the current reporting period, the carrier shall limit the application of such adjustments only to minus adjustments beginning not more than 60 days after the report is sent to the

department. For any subsequent reporting period, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 5 percent, the carrier may apply both plus and minus adjustments. A small employer carrier may provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group. Group size administrative and acquisition expense factors may be developed by each carrier to reflect the carrier's experience and are subject to department review and approval.

6. A small employer carrier rating methodology may include separate rating categories for one dependent child, for two dependent children, and for three or more dependent children for family coverage of employees having a spouse and dependent children or employees having dependent children only. A small employer carrier may have fewer, but not greater, numbers of categories for dependent children than those specified in this subparagraph.

7. Small employer carriers may not use a composite rating methodology to rate a small employer with fewer than 10 employees. For the purposes of this subparagraph, a "composite rating methodology" means a rating methodology that averages the impact of the rating factors for age and gender in the premiums charged to all of the employees of a small employer.

(d) Notwithstanding s. 627.401(2), this section and ss. 627.410 and 627.411 apply to any health benefit plan provided by a small employer carrier that is an insurer, and this section and s. 641.31 apply to any health benefit provided by a small employer carrier that is a health maintenance organization that provides coverage to one or more employees of a small employer regardless of where the policy, certificate, or contract is issued or delivered, if the health benefit plan covers employees or their covered dependents who are residents of this state.

Section 71. Section 641.201, Florida Statutes, is amended to read:

641.201 Applicability of other laws.—Except as provided in this part, health maintenance organizations shall be governed by the provisions of this part and part III of this chapter and shall be exempt from all other provisions of the Florida Insurance Code except those provisions of the Florida Insurance Code that are explicitly made applicable to health maintenance organizations.

Section 72. Section 641.234, Florida Statutes, is amended to read:

641.234 Administrative, provider, and management contracts.—

(1) The department may require a health maintenance organization to submit any contract for administrative services, contract with a provider other than an individual physician, contract for management services, and contract with an affiliated entity to the department.

(2) After review of a contract the department may order the health maintenance organization to cancel the contract in accordance with the terms of the contract and applicable law if it determines:



(a) That the fees to be paid by the health maintenance organization under the contract are so unreasonably high as compared with similar contracts entered into by the health maintenance organization or as compared with similar contracts entered into by other health maintenance organizations in similar circumstances that the contract is detrimental to the subscribers, stockholders, investors, or creditors of the health maintenance organization; or.

(b) That the contract is with an entity that is not licensed under state statutes, if such license is required, or is not in good standing with the applicable regulatory agency.

(3) All contracts for administrative services, management services, provider services other than individual physician contracts, and with affiliated entities entered into or renewed by a health maintenance organization on or after October 1, 1988, shall contain a provision that the contract shall be canceled upon issuance of an order by the department pursuant to this section.

Section 73. Subsection (2) of section 641.27, Florida Statutes, is amended to read:

641.27 Examination by the department.—

(2) The department may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform audits or examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate of authority or to determine continued compliance with the requirements of this part, in which case the payment must be made, directly to the contracted examiner by the health maintenance organization examined, in accordance with the rates and terms agreed to by the department and the examiner. Any contracted assistance shall be under the direct supervision of the department. The results of any contracted assistance shall be subject to the review of, and approval, disapproval, or modification by, the department.

Section 74. Section 641.226, Florida Statutes, is created to read:

641.226 Application of federal solvency requirements to provider-sponsored organizations.—The solvency requirements of sections 1855 and 1856 of the Balanced Budget Act of 1997 and rules adopted by the Secretary of the United States Department of Health and Human Services apply to a health maintenance organization that is a provider-sponsored organization rather than the solvency requirements of this part. However, if the provider-sponsored organization does not meet the solvency requirements of this part, the organization is limited to the issuance of Medicare+Choice plans to eligible individuals. For the purposes of this section, the terms “Medicare+Choice plans,” “provider-sponsored organizations,” and “solvency requirements” have the same meaning as defined in the federal act and federal rules and regulations.

Section 75. Section 641.39, Florida Statutes, is created to read:

641.39 Soliciting or accepting new or renewal health maintenance contracts by insolvent or impaired health maintenance organization prohibited; penalty.—

(1) Whether or not delinquency proceedings as to a health maintenance organization have been or are to be initiated, a director or officer of a health maintenance organization, except with the written permission of the Department of Insurance, may not authorize or permit the health maintenance organization to solicit or accept new or renewal health maintenance contracts or provider contracts in this state after the director or officer knew, or reasonably should have known, that the health maintenance organization was insolvent or impaired. As used in this section, the term “impaired” means that the health maintenance organization does not meet the requirements of s. 641.225.

(2) Any director or officer who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 76. Section 641.2011, Florida Statutes, is created to read:

641.2011 Insurance holding companies.—Part IV of chapter 628 applies to health maintenance organizations licensed under part I of chapter 641.

Section 77. Notwithstanding any other provision of law, the sum of \$200,000 is appropriated from the Insurance Commissioner’s Regulatory Trust Fund to the Office of Legislative Services for the purpose of implementing the legislative intent expressed in s. 624.215(1), Florida Statutes, for a systematic review of proposed mandated health coverages. The review must be conducted by certified actuaries and other appropriate professionals and shall consist of an assessment of the impact, including, but not limited to, the costs and benefits, of mandated health coverages using the guidelines provided in s. 624.215(2), Florida Statutes. This assessment shall establish the aggregate cost of proposed mandated health coverages. The term “mandated health coverages” as used herein does not include health care providers.

Section 78. Subsection (4) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

(a) The governing body in each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents and is not authorized to levy a surtax under subsection (5) or subsection (6), may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(b) If the ordinance is conditioned on a referendum, a statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . .CENTS TAX  
AGAINST THE. . .CENTS TAX

(c) The ordinance adopted by the governing body providing for the imposition of the surtax shall set forth a plan for providing health care services to qualified residents, as defined in paragraph (d). Such plan and subsequent amendments to it shall fund a broad range of health care services for both indigent persons and the medically poor, including, but not limited to, primary care and preventive care as well as hospital care. The plan must also address the services to be provided by the Level I trauma center. It shall emphasize a continuity of care in the most cost-effective setting, taking into consideration both a high quality of care and geographic access. Where consistent with these objectives, it shall include, without limitation, services rendered by physicians, clinics, community hospitals, mental health centers, and alternative delivery sites, as well as at least one regional referral hospital where appropriate. It shall provide that agreements negotiated between the county and providers, including hospitals with a Level I trauma center, will include reimbursement methodologies that take into account the cost of services rendered to eligible patients, recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care, promote the advancement of technology in medical services, recognize the level of responsiveness to medical needs in trauma cases, and require cost containment including, but not limited to, case management. It must also provide that any hospitals that are owned and operated by government entities on May 21, 1991, must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to meetings of the governing board, the subject of which is budgeting resources for the rendition of charity care as that term is defined in the Florida Hospital Uniform Reporting System (FHURS) manual referenced in s. 408.07. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service delivery and funding.

(d) For the purpose of this subsection, the term “qualified resident” means residents of the authorizing county who are:

1. Qualified as indigent persons as certified by the authorizing county;
2. Certified by the authorizing county as meeting the definition of the medically poor, defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; or not being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort; or
3. Participating in innovative, cost-effective programs approved by the authorizing county.

(e) Moneys collected pursuant to this subsection remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

1. Maintain the moneys in an indigent health care trust fund;
2. Invest any funds held on deposit in the trust fund pursuant to general law; and
3. Disburse the funds, including any interest earned, to any provider of health care services, as provided in paragraphs (c) and (d), upon directive from the authorizing county. However, if a county has a population of at least 800,000 residents and has levied the surtax authorized in this subsection, notwithstanding any directive from the authorizing county, on October 1 of each calendar year, the clerk of the court shall issue a check in the amount of \$6.5 million to a hospital in its jurisdiction that has a Level I trauma center or shall issue a check in the amount of \$3.5 million to a hospital in its jurisdiction that has a Level I trauma center if that county enacts and implements a hospital lien law in accordance with chapter 98-499, Laws of Florida. The issuance of the checks on October 1 of each year is provided in recognition of the Level I trauma center status and shall be in addition to the base contract amount received during fiscal year 1999-2000 and any additional amount negotiated to the base contract. If the hospital receiving funds for its Level I trauma center status requests such funds to be used to generate federal matching funds under Medicaid, the clerk of the court shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that it is allowed through the General Appropriations Act.

(f) Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent.

(g) This subsection expires October 1, 2005.

Section 79. Sections 468.821 through 468.829, Florida Statutes, are renumbered as sections 464.201 through 464.209, respectively, designated as part II of chapter 464, Florida Statutes, and amended to read:

464.201 ~~468.821~~ Definitions.—As used in this part, the term:

(1) “Approved training program” means:

(a) A course of training conducted by a public sector or private sector educational center licensed by the Department of Education to implement the basic curriculum for nursing assistants which is approved by the Department of Education. Beginning October 1, 2000, the board shall assume responsibility for approval of training programs under this paragraph.

(b) A training program operated under s. 400.141.

(2) “Board” means the Board of Nursing.

~~(3)~~(2) “Certified nursing assistant” means a person who meets the qualifications specified in this part and who is certified by the board department as a certified nursing assistant.

~~(4)~~(3) “Department” means the Department of Health.

~~(5)~~(4) “Registry” means the listing of certified nursing assistants maintained by the board department.

464.202 ~~468.822~~ Duties and powers of the board department.—The board department shall maintain, or contract with or approve another entity to maintain, a state registry of certified nursing assistants. The registry must consist of the name of each certified nursing assistant in this state; other identifying information defined by board department rule; certification status; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided under chapter 435; and any disciplinary action taken against the certified nursing assistant. The registry shall be accessible to the public, the certificateholder, employers, and other state agencies. The board department shall adopt by rule testing procedures for use in certifying nursing assistants and shall adopt rules regulating the practice of certified nursing assistants to enforce this part. The board department may contract with or approve another entity or organization to provide the examination services, including the development and administration of examinations. The board shall require that the contract provider offer certified nursing assistant applications via the Internet, and may require the contract provider to accept certified nursing assistant applications for processing via the Internet. The board shall require the contract provider to provide the preliminary results of the certified nursing examination on the date the test is administered. The provider shall pay all reasonable costs and expenses incurred by the board department in evaluating the provider’s application and performance during the delivery of services, including examination services and procedures for maintaining the certified nursing assistant registry.

464.203 ~~468.823~~ Certified nursing assistants; certification requirement.—

(1) The board department shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum compe-

tency to read and write and successfully passes the required Level I or Level II screening pursuant to s. 400.215 and meets one of the following requirements:

(a) Has successfully completed an approved training program and achieved a minimum score, established by rule of the board department, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion approved by the board department and administered at a site and by personnel approved by the department.

(b) Has achieved a minimum score, established by rule of the board department, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the board department and administered at a site and by personnel approved by the department and:

1. Has a high school diploma, or its equivalent; or
2. Is at least 18 years of age.

(c) Is currently certified in another state; is listed on that state's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that state; and has successfully completed a national nursing assistant evaluation in order to receive certification in that state.

(d) Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the board and administered at a site and by personnel approved by the department.

(2) If an applicant fails to pass the nursing assistant competency examination in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program.

(3) An oral examination shall be administered as a substitute for the written portion of the examination upon request. The oral examination shall be administered at a site and by personnel approved by the department.

(4) The board department shall adopt rules to provide for the initial certification of certified nursing assistants.

(5) A certified nursing assistant shall maintain a current address with the board department in accordance with s. 455.717.

464.204 468.824 Denial, suspension, or revocation of certification; disciplinary actions.—

(1) The following acts constitute grounds for which the board department may impose disciplinary sanctions as specified in subsection (2):

(a) Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board department.

(b) Intentionally violating any provision of this chapter, chapter 455, or the rules adopted by the board department.

(2) When the board department finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial, suspension, or revocation of certification.

(b) Imposition of an administrative fine not to exceed \$150 for each count or separate offense.

(c) Imposition of probation or restriction of certification, including conditions such as corrective actions as retraining or compliance with an approved treatment program for impaired practitioners.

(3) The board department may, upon the request of a certificateholder, exempt the certificateholder from disqualification of certification or ~~disqualification~~ of employment in accordance with chapter 435 and issue a letter of exemption. ~~After January 1, 2000,~~ The board department must notify an applicant seeking an exemption from disqualification from certification or employment of its decision to approve or deny the request within 30 days after the date the board department receives all required documentation.

464.205 ~~468.825~~ Availability of disciplinary records and proceedings.—Pursuant to s. 455.621, any complaint or record maintained by the department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the board department to discipline a certified nursing assistant shall remain open and available to the public.

464.206 ~~468.826~~ Exemption from liability.—If an employer terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report of the Department of Law Enforcement, the employer is not civilly liable for such termination and a cause of action may not be brought against the employer for damages, regardless of whether the employee has filed for an exemption from the board department under s. 464.204(3) ~~468.824(1)~~. There may not be any monetary liability on the part of, and a cause of action for damages may not arise against, any licensed facility, its governing board or members thereof, medical staff, disciplinary board, agents, investigators, witnesses, employees, or any other person for any action taken in good faith without intentional fraud in carrying out this section.

464.207 ~~468.827~~ Penalties.—It is a misdemeanor of the first degree, punishable as provided under s. 775.082 or s. 775.083, for any person, knowingly or intentionally, to fail to disclose, by false statement, misrepresentation,

impersonation, or other fraudulent means, in any application for voluntary or paid employment or certification ~~license~~ regulated under this part, a material fact used in making a determination as to such person's qualifications to be an employee or certificateholder ~~licensee~~.

464.208 ~~468.828~~ Background screening information; rulemaking authority.—

(1) The Agency for Health Care Administration shall allow the board ~~department~~ to electronically access its background screening database and records, and the Department of Children and Family Services shall allow the board ~~department~~ to electronically access its central abuse registry and tracking system under chapter 415.

(2) An employer, or an agent thereof, may not use criminal records, juvenile records, or information obtained from the central abuse hotline under chapter 415 relating to vulnerable adults for any purpose other than determining if the person meets the requirements of this part. Such records and information obtained by the board ~~department~~ shall remain confidential and exempt from s. 119.07(1).

(3) If the requirements of the Omnibus Budget Reconciliation Act of 1987, as amended, for the certification of nursing assistants are in conflict with this part, the federal requirements shall prevail for those facilities certified to provide care under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act.

(4) The board ~~department~~ shall adopt rules to administer this part.

464.209 ~~468.829~~ Certified nursing assistant registry.—

(1) By October 1, 1999, and by October 1 of every year thereafter, each employer of certified nursing assistants shall submit to the board ~~Department of Health~~ a list of the names and social security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months. Employers may submit such information electronically through the department's Internet site.

(2) The board ~~department~~ shall update the certified nursing assistant registry upon receipt of the lists of certified nursing assistants, ~~and shall complete the first of such updates by December 31, 1999.~~

(3) Each certified nursing assistant whose name is not reported to the board ~~department~~ under subsection (1) on October 1, 1999, shall be assigned an inactive certification on January 1, 2000. A certified nursing assistant may remove such an inactive certification by submitting documentation to the board ~~department~~ that he or she was employed for a minimum of 8 hours for monetary compensation as a certified nursing assistant in a nursing-related occupation during the preceding 24 months.

(4) This section is repealed October 2, 2001.



Section 80. Section 464.2085, Florida Statutes, is created to read:

464.2085 Council on Certified Nursing Assistants.—The Council on Certified Nursing Assistants is created within the department, under the Board of Nursing.

(1) The council shall consist of five members appointed as follows:

(a) The chairperson of the Board of Nursing shall appoint two members who are registered nurses. One of the members must currently supervise a certified nursing assistant in a licensed nursing home.

(b) The chairperson of the Board of Nursing shall appoint one member who is a licensed practical nurse who is currently working in a licensed nursing home.

(c) The secretary of the department or his or her designee shall appoint two certified nursing assistants currently certified under this chapter, at least one of whom is currently working in a licensed nursing home.

(2) The council shall:

(a) Recommend to the department policies and procedures for the certification of nursing assistants.

(b) Develop all rules regulating the education, training, and certification process for nursing assistants certified under this chapter. The Board of Nursing shall consider adopting a proposed rule developed by the council at the regularly scheduled meeting immediately following the submission of the proposed rule by the council.

(c) Make recommendations to the board regarding all matters relating to the certification of nursing assistants.

(d) Address concerns and problems of certified nursing assistants in order to improve safety in the practice of certified nursing assistants.

Section 81. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

~~1. Nursing assistants, as provided under s. 400.211.~~

1.2. Health care services pools, as provided under s. 402.48.

2.3. The Board of Acupuncture, created under chapter 457.

3.4. The Board of Medicine, created under chapter 458.

- ~~4.5.~~ The Board of Osteopathic Medicine, created under chapter 459.
- ~~5.6.~~ The Board of Chiropractic Medicine, created under chapter 460.
- ~~6.7.~~ The Board of Podiatric Medicine, created under chapter 461.
- ~~7.8.~~ Naturopathy, as provided under chapter 462.
- ~~8.9.~~ The Board of Optometry, created under chapter 463.
- ~~9.10.~~ The Board of Nursing, created under part I of chapter 464.
10. Nursing assistants, as provided under part II of chapter 464.
11. The Board of Pharmacy, created under chapter 465.
12. The Board of Dentistry, created under chapter 466.
13. Midwifery, as provided under chapter 467.
14. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
15. The Board of Nursing Home Administrators, created under part II of chapter 468.
16. The Board of Occupational Therapy, created under part III of chapter 468.
17. Respiratory therapy, as provided under part V of chapter 468.
18. Dietetics and nutrition practice, as provided under part X of chapter 468.
19. The Board of Athletic Training, created under part XIII of chapter 468.
20. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
21. Electrolysis, as provided under chapter 478.
22. The Board of Massage Therapy, created under chapter 480.
23. The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
24. Medical physicists, as provided under part IV of chapter 483.
25. The Board of Opticianry, created under part I of chapter 484.
26. The Board of Hearing Aid Specialists, created under part II of chapter 484.
27. The Board of Physical Therapy Practice, created under chapter 486.

28. The Board of Psychology, created under chapter 490.
29. School psychologists, as provided under chapter 490.
30. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

The department may contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

Section 82. Subsection (38) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(38) “Licensed health care professional” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

Section 83. Paragraph (b) of subsection (1) of section 39.304, Florida Statutes, is amended to read:

39.304 Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.—

(1)

(b) If the areas of trauma visible on a child indicate a need for a medical examination, or if the child verbally complains or otherwise exhibits distress as a result of injury through suspected child abuse, abandonment, or neglect, or is alleged to have been sexually abused, the person required to investigate may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child’s parents or legal custodian. Such examination may be performed by any licensed physician or an advanced registered nurse practitioner licensed pursuant to part I of chapter 464. Any licensed physician, or advanced registered nurse practitioner licensed pursuant to part I of chapter 464, who has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child’s parent or legal custodian.

Section 84. Paragraph (c) of subsection (6) of section 110.131, Florida Statutes, is amended to read:

110.131 Other-personal-services temporary employment.—

(6)

(c) Notwithstanding the provisions of this section, the agency head or his or her designee may extend the other-personal-services employment of a health care practitioner licensed pursuant to chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 466, chapter 468, chapter 483, chapter 486, or chapter 490 beyond 2,080 hours and may employ such practitioner on an hourly or other basis.

Section 85. Subsection (1) of section 232.46, Florida Statutes, is amended to read:

232.46 Administration of medication by school district personnel.—

(1) Notwithstanding the provisions of the Nurse Practice Act, part I of chapter 464, school district personnel shall be authorized to assist students in the administration of prescription medication when the following conditions have been met:

(a) Each district school board shall include in its approved school health services plan a procedure to provide training, by a registered nurse, a licensed practical nurse, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459, to the school personnel designated by the principal to assist students in the administration of prescribed medication. Such training may be provided in collaboration with other school districts, through contract with an education consortium, or by any other arrangement consistent with the intent of this section.

(b) Each district school board shall adopt policies and procedures governing the administration of prescription medication by school district personnel. The policies and procedures shall include, but not be limited to, the following provisions:

1. For each prescribed medication, the student's parent or guardian shall provide to the school principal a written statement which shall grant to the principal or the principal's designee permission to assist in the administration of such medication and which shall explain the necessity for such medication to be provided during the school day, including any occasion when the student is away from school property on official school business. The school principal or the principal's trained designee shall assist the student in the administration of such medication.

2. Each prescribed medication to be administered by school district personnel shall be received, counted, and stored in its original container. When the medication is not in use, it shall be stored in its original container in a secure fashion under lock and key in a location designated by the principal.

Section 86. Subsection (6) of section 240.4075, Florida Statutes, is amended to read:

240.4075 Nursing Student Loan Forgiveness Program.—

(6) In addition to licensing fees imposed under part I of chapter 464, there is hereby levied and imposed an additional fee of \$5, which fee shall

be paid upon licensure or renewal of nursing licensure. Revenues collected from the fee imposed in this subsection shall be deposited in the Nursing Student Loan Forgiveness Trust Fund of the Department of Education and will be used solely for the purpose of carrying out the provisions of this section and s. 240.4076. Up to 50 percent of the revenues appropriated to implement this subsection may be used for the nursing scholarship program established pursuant to s. 240.4076.

Section 87. Paragraph (b) of subsection (1) of section 246.081, Florida Statutes, is amended to read:

246.081 License, certificate of exemption, or authorization required; exceptions.—

(1) The following colleges are not under the jurisdiction of the board and are not required to obtain a license, a certificate of exemption, permission to operate, or an authorization from the board:

(b) Any college, school, or course licensed or approved for establishment and operation under part I of chapter 464, chapter 466, or chapter 475, or any other chapter of the Florida Statutes, requiring licensing or approval as defined in ss. 246.011-246.151.

Section 88. Subsection (2) of section 310.102, Florida Statutes, is amended to read:

310.102 Treatment programs for impaired pilots and deputy pilots.—

(2) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a licensee under the jurisdiction of the Division of Medical Quality Assurance within the Department of Health, and at least one consultant must be a practitioner licensed under chapter 458, chapter 459, or part I of chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a pilot or deputy pilot is, in fact, impaired.

Section 89. Subsection (7) of section 381.0302, Florida Statutes, is amended to read:

381.0302 Florida Health Services Corps.—

(7) The financial penalty for noncompliance with participation requirements for persons who have received financial payments under subsection (5) or subsection (6) shall be determined in the same manner as in the National Health Services Corps scholarship program. In addition, noncompliance with participation requirements shall also result in ineligibility for professional licensure or renewal of licensure under chapter 458, chapter 459, chapter 460, part I of chapter 464, chapter 465, or chapter 466. For a participant who is unable to participate for reasons of disability, the penalty is the actual amount of financial assistance provided to the participant. Financial penalties shall be deposited in the Florida Health Services Corps

Trust Fund and shall be used to provide additional scholarship and financial assistance.

Section 90. Subsection (1) of section 384.30, Florida Statutes, is amended to read:

**384.30 Minors' consent to treatment.—**

(1) The department and its authorized representatives, each physician licensed to practice medicine under the provisions of chapter 458 or chapter 459, each health care professional licensed under the provisions of part I of chapter 464 who is acting pursuant to the scope of his or her license, and each public or private hospital, clinic, or other health facility may examine and provide treatment for sexually transmissible diseases to any minor, if the physician, health care professional, or facility is qualified to provide such treatment. The consent of the parents or guardians of a minor is not a prerequisite for an examination or treatment.

Section 91. Section 384.31, Florida Statutes, is amended to read:

**384.31 Serological testing of pregnant women; duty of the attendant.—**

(1) Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under part I of chapter 464 or chapter 467, attending a pregnant woman for conditions relating to pregnancy during the period of gestation and delivery shall take or cause to be taken a sample of venous blood at a time or times specified by the department. Each sample of blood shall be tested by a laboratory approved for such purposes under part I of chapter 483 for sexually transmissible diseases as required by rule of the department.

(2) At the time the venous blood sample is taken, testing for human immunodeficiency virus (HIV) infection shall be offered to each pregnant woman. The prevailing professional standard of care in this state requires each health care provider and midwife who attends a pregnant woman to counsel the woman to be tested for human immunodeficiency virus (HIV). Counseling shall include a discussion of the availability of treatment if the pregnant woman tests HIV positive. If a pregnant woman objects to HIV testing, reasonable steps shall be taken to obtain a written statement of such objection, signed by the patient, which shall be placed in the patient's medical record. Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under part I of chapter 464 or chapter 467, who attends a pregnant woman who has been offered and objects to HIV testing shall be immune from liability arising out of or related to the contracting of HIV infection or acquired immune deficiency syndrome (AIDS) by the child from the mother.

Section 92. Subsection (23) of section 394.455, Florida Statutes, is amended to read:

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

(23) “Psychiatric nurse” means a registered nurse licensed under part I of chapter 464 who has a master’s degree or a doctorate in psychiatric nursing and 2 years of post-master’s clinical experience under the supervision of a physician.

Section 93. Paragraphs (a) and (b) of subsection (2) and subsection (4) of section 395.0191, Florida Statutes, are amended to read:

395.0191 Staff membership and clinical privileges.—

(2)(a) Each licensed facility shall establish rules and procedures for consideration of an application for clinical privileges submitted by an advanced registered nurse practitioner licensed and certified under part I of chapter 464, in accordance with the provisions of this section. No licensed facility shall deny such application solely because the applicant is licensed under part I of chapter 464 or because the applicant is not a participant in the Florida Birth-Related Neurological Injury Compensation Plan.

(b) An advanced registered nurse practitioner who is certified as a registered nurse anesthetist licensed under part I of chapter 464 shall administer anesthesia under the onsite medical direction of a professional licensed under chapter 458, chapter 459, or chapter 466, and in accordance with an established protocol approved by the medical staff. The medical direction shall specifically address the needs of the individual patient.

(4) Nothing herein shall restrict in any way the authority of the medical staff of a licensed facility to review for approval or disapproval all applications for appointment and reappointment to all categories of staff and to make recommendations on each applicant to the governing board, including the delineation of privileges to be granted in each case. In making such recommendations and in the delineation of privileges, each applicant shall be considered individually pursuant to criteria for a doctor licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or for an advanced registered nurse practitioner licensed and certified under part I of chapter 464, or for a psychologist licensed under chapter 490, as applicable. The applicant’s eligibility for staff membership or clinical privileges shall be determined by the applicant’s background, experience, health, training, and demonstrated competency; the applicant’s adherence to applicable professional ethics; the applicant’s reputation; and the applicant’s ability to work with others and by such other elements as determined by the governing board, consistent with this part.

Section 94. Subsection (11) of section 400.021, Florida Statutes, is amended to read:

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

(11) “Nursing home facility” means any facility which provides nursing services as defined in part I of chapter 464 and which is licensed according to this part.

Section 95. Section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

(1) To serve as a nursing assistant in any nursing home, a person must be certified as a nursing assistant under part II XV of chapter 464 468, unless the person is ~~except~~ a registered nurse or practical nurse licensed in accordance with part I of chapter 464 or an applicant for such licensure who is permitted to practice nursing in accordance with rules adopted by the Board of Nursing pursuant to part I of chapter 464, ~~to serve as a nursing assistant in any nursing home.~~

(2) The following categories of persons who are not certified as nursing assistants under ~~this part II~~ of chapter 464 may be employed by a nursing facility for a period of 4 months:

(a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program; or

(b) Persons who have been positively verified ~~by a state-approved test site~~ as actively certified and on the registry in another state with no findings of abuse, ~~but who have not completed the written examination required under this section.~~; or

(c) Persons who have preliminarily passed the state's certification exam.

The certification requirement must be met within 4 months after ~~of~~ initial employment as a nursing assistant in a licensed nursing facility.

(3) Nursing homes shall require persons seeking employment as a certified nursing assistant to submit an employment history to the facility. The facility shall verify the employment history unless, through diligent efforts, such verification is not possible. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, a former employer who reasonably and in good faith communicates his or her honest opinion about a former employee's job performance.

Section 96. Paragraph (b) of subsection (4) of section 400.215, Florida Statutes, is amended to read:

400.215 Personnel screening requirement.—

(4)

(b) As provided in s. 435.07, the appropriate regulatory board within the Department of Health, or that department itself when there is no board, may grant an exemption from disqualification to an employee or prospective employee who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department.

Section 97. Paragraph (c) is added to subsection (3) of section 400.23, Florida Statutes, to read:



400.23 Rules; evaluation and deficiencies; licensure status.—

(3)

(c) Licensed practical nurses licensed under chapter 464 who are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

Section 98. Subsections (12) and (14) of section 400.402, Florida Statutes, are amended to read:

400.402 Definitions.—When used in this part, the term:

(12) “Extended congregate care” means acts beyond those authorized in subsection (17) that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(14) “Limited nursing services” means acts that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties but limited to those acts which the department specifies by rule. Acts which may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for assisted living facilities and shall not be complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints.

Section 99. Paragraphs (a) and (b) of subsection (3) of section 400.407, Florida Statutes, are amended to read:

400.407 License required; fee, display.—

(3) Any license granted by the agency must state the maximum resident capacity of the facility, the type of care for which the license is granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the agency. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.

(a) A standard license shall be issued to facilities providing one or more of the services identified in s. 400.402. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 400.4255.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to part I of chapter 464

by persons licensed thereunder, and supportive services defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and whether the designation applies to all or part of a facility. Such designation may be made at the time of initial licensure or biennial relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

- a. A class I or class II violation;
- b. Three or more repeat or recurring class III violations of identical or similar resident care standards as specified in rule from which a pattern of noncompliance is found by the agency;
- c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;
- d. Violation of resident care standards resulting in a requirement to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or
- f. Imposition of a moratorium on admissions or initiation of injunctive proceedings.

2. Facilities that are licensed to provide extended congregate care services shall maintain a written progress report on each person who receives such services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit such facilities at least two times a year to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with this part and with rules that relate to extended congregate care. One of these visits may be in conjunction with the regular biennial survey. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that biennially inspects such facility. The agency may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the biennial inspection, the registered nurse determines that extended congregate care services are being provided appropri-

ately, and if the facility has no class I or class II violations and no uncorrected class III violations. Before such decision is made, the agency shall consult with the long-term care ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care. The agency may not waive one of the required yearly monitoring visits if complaints have been made and substantiated.

3. Facilities that are licensed to provide extended congregate care services shall:

a. Demonstrate the capability to meet unanticipated resident service needs.

b. Offer a physical environment that promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.

c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency, as necessary.

d. Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place to the extent possible, so that moves due to changes in functional status are minimized or avoided.

e. Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.

f. Implement the concept of managed risk.

g. Provide, either directly or through contract, the services of a person licensed pursuant to part I of chapter 464.

h. In addition to the training mandated in s. 400.452, provide specialized training as defined by rule for facility staff.

4. Facilities licensed to provide extended congregate care services are exempt from the criteria for continued residency as set forth in rules adopted under s. 400.441. Facilities so licensed shall adopt their own requirements within guidelines for continued residency set forth by the department in rule. However, such facilities may not serve residents who require 24-hour nursing supervision. Facilities licensed to provide extended congregate care services shall provide each resident with a written copy of facility policies governing admission and retention.

5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for

a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.

6. Before admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 400.426(4) and the facility must develop a preliminary service plan for the individual.

7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility shall make arrangements for relocating the person in accordance with s. 400.428(1)(k).

8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.

9. No later than January 1 of each year, the department, in consultation with the agency, shall prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees, a report on the status of, and recommendations related to, extended congregate care services. The status report must include, but need not be limited to, the following information:

a. A description of the facilities licensed to provide such services, including total number of beds licensed under this part.

b. The number and characteristics of residents receiving such services.

c. The types of services rendered that could not be provided through a standard license.

d. An analysis of deficiencies cited during biennial inspections.

e. The number of residents who required extended congregate care services at admission and the source of admission.

f. Recommendations for statutory or regulatory changes.

g. The availability of extended congregate care to state clients residing in facilities licensed under this part and in need of additional services, and recommendations for appropriations to subsidize extended congregate care services for such persons.

h. Such other information as the department considers appropriate.

Section 100. Paragraphs (a) and (c) of subsection (1) and subsection (2) of section 400.4255, Florida Statutes, are amended to read:

400.4255 Use of personnel; emergency care.—

(1)(a) Persons under contract to the facility, facility staff, or volunteers, who are licensed according to part I of chapter 464, or those persons exempt under s. 464.022(1), and others as defined by rule, may administer medications to residents, take residents' vital signs, manage individual weekly pill

organizers for residents who self-administer medication, give prepackaged enemas ordered by a physician, observe residents, document observations on the appropriate resident's record, report observations to the resident's physician, and contract or allow residents or a resident's representative, designee, surrogate, guardian, or attorney in fact to contract with a third party, provided residents meet the criteria for appropriate placement as defined in s. 400.426. Nursing assistants certified pursuant to part II of chapter 464 s. 400.211 may take residents' vital signs as directed by a licensed nurse or physician.

(c) In an emergency situation, licensed personnel may carry out their professional duties pursuant to part I of chapter 464 until emergency medical personnel assume responsibility for care.

(2) In facilities licensed to provide extended congregate care, persons under contract to the facility, facility staff, or volunteers, who are licensed according to part I of chapter 464, or those persons exempt under s. 464.022(1), or those persons certified as nursing assistants pursuant to part II of chapter 464 s. 400.211, may also perform all duties within the scope of their license or certification, as approved by the facility administrator and pursuant to this part.

Section 101. Subsection (3) of section 400.426, Florida Statutes, is amended to read:

400.426 Appropriateness of placements; examinations of residents.—

(3) Persons licensed under part I of chapter 464 who are employed by or under contract with a facility shall, on a routine basis or at least monthly, perform a nursing assessment of the residents for whom they are providing nursing services ordered by a physician, except administration of medication, and shall document such assessment, including any substantial changes in a resident's status which may necessitate relocation to a nursing home, hospital, or specialized health care facility. Such records shall be maintained in the facility for inspection by the agency and shall be forwarded to the resident's case manager, if applicable.

Section 102. Subsections (3) and (21) of section 400.462, Florida Statutes, are amended to read:

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

(3) "Certified nursing assistant" means any person who has been issued a certificate under part II of chapter 464 s. 400.211. The licensed home health agency or licensed nurse registry shall ensure that the certified nursing assistant employed by or under contract with the home health agency or licensed nurse registry is adequately trained to perform the tasks of a home health aide in the home setting.

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

Section 103. Paragraph (c) of subsection (6) of section 400.464, Florida Statutes, is amended to read:

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

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

(c) A health care professional, whether or not incorporated, who is licensed under chapter 457; chapter 458; chapter 459; part I of chapter 464; chapter 467; part I, part III, part V, or part X of chapter 468; chapter 480; chapter 486; chapter 490; or chapter 491; and who is acting alone within the scope of his or her professional license to provide care to patients in their homes.

Section 104. Paragraph (a) of subsection (10), subsection (11), and paragraph (a) of subsection (15) of section 400.506, Florida Statutes, are amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(10)(a) A nurse registry may refer for contract in private residences registered nurses and licensed practical nurses registered and licensed under part I of chapter 464, certified nursing assistants certified under part II of chapter 464 ~~s. 400.211~~, home health aides who present documented proof of successful completion of the training required by rule of the agency, and companions or homemakers for the purposes of providing those services authorized under s. 400.509(1). Each person referred by a nurse registry must provide current documentation that he or she is free from communicable diseases.

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

(15) All persons referred for contract in private residences by a nurse registry must comply with the following requirements for a plan of treatment:

(a) When, in accordance with the privileges and restrictions imposed upon a nurse under part I of chapter 464, the delivery of care to a patient is under the direction or supervision of a physician or when a physician is responsible for the medical care of the patient, a medical plan of treatment must be established for each patient receiving care or treatment provided by a licensed nurse in the home. The original medical plan of treatment must be timely signed by the physician and reviewed by him or her in consultation

with the licensed nurse at least every 2 months. Any additional order or change in orders must be obtained from the physician and reduced to writing and timely signed by the physician. The delivery of care under a medical plan of treatment must be substantiated by the appropriate nursing notes or documentation made by the nurse in compliance with nursing practices established under part I of chapter 464.

Section 105. Subsection (1) of section 400.512, Florida Statutes, is amended to read:

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

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

(b) The appropriate regulatory board within the Department of Health, or that department itself when there is no board, may, upon request of the licensed health care practitioner, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.

Section 106. Subsections (2) and (3) of section 400.6105, Florida Statutes, are amended to read:

400.6105 Staffing and personnel.—

(2) Each hospice shall employ a full-time registered nurse licensed pursuant to part I of chapter 464 who shall coordinate the implementation of the plan of care for each patient.

(3) A hospice shall employ a hospice care team or teams who shall participate in the establishment and ongoing review of the patient's plan of care, and be responsible for and supervise the delivery of hospice care and services to the patient. The team shall, at a minimum, consist of a physician licensed pursuant to chapter 458 or chapter 459, a nurse licensed pursuant to part I of chapter 464, a social worker, and a pastoral or other counselor. The composition of the team may vary for each patient and, over time, for the same patient to ensure that all the patient's needs and preferences are met.

Section 107. Subsection (20) of section 401.23, Florida Statutes, is amended to read:

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

(20) "Registered nurse" means a practitioner who is licensed to practice professional nursing pursuant to part I of chapter 464.

Section 108. Paragraph (c) of subsection (1) of section 401.252, Florida Statutes, is amended to read:

401.252 Interfacility transfer.—

(1) A licensed basic or advanced life support ambulance service may conduct interfacility transfers in a permitted ambulance, using a registered nurse in place of an emergency medical technician or paramedic, if:

(c) The registered nurse operates within the scope of part I of chapter 464.

Section 109. Subsection (11) of section 408.706, Florida Statutes, is amended to read:

408.706 Community health purchasing alliances; accountable health partnerships.—

(11) The ability to recruit and retain alliance district health care providers in its provider network. For provider networks initially formed in an alliance district after July 1, 1993, an accountable health partnership shall make offers as to provider participation in its provider network to relevant alliance district health care providers for at least 60 percent of the available provider positions. A provider who is made an offer may participate in an accountable health partnership as long as the provider abides by the terms and conditions of the provider network contract, provides services at a rate or price equal to the rate or price negotiated by the accountable health partnership, and meets all of the accountable health partnership's qualifications for participation in its provider networks including, but not limited to, network adequacy criteria. For purposes of this subsection, "alliance district health care provider" means a health care provider who is licensed under chapter 458, chapter 459, chapter 460, chapter 461, part I of chapter 464, or chapter 465 who has practiced in Florida for more than 1 year within the alliance district served by the accountable health partnership.

Section 110. Paragraph (d) of subsection (12) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, 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, provided the adjustment is consistent with legislative intent.

(12)

(d) Notwithstanding paragraph (b), reimbursement fees to physicians for providing total obstetrical services to Medicaid recipients, which include prenatal, delivery, and postpartum care, shall be at least \$1,500 per delivery for a pregnant woman with low medical risk and at least \$2,000 per delivery for a pregnant woman with high medical risk. However, reimbursement to physicians working in Regional Perinatal Intensive Care Centers designated pursuant to chapter 383, for services to certain pregnant Medicaid recipients with a high medical risk, may be made according to obstetrical care and neonatal care groupings and rates established by the agency. Nurse midwives licensed under part I of chapter 464 or midwives licensed under chapter 467 shall be reimbursed at no less than 80 percent of the low medical risk fee. The agency shall by rule determine, for the purpose of this paragraph, what constitutes a high or low medical risk pregnant woman and shall not pay more based solely on the fact that a caesarean section was performed, rather than a vaginal delivery. The agency shall by rule determine a prorated payment for obstetrical services in cases where only part of the total prenatal, delivery, or postpartum care was performed. The Department of Health shall adopt rules for appropriate insurance coverage for midwives licensed under chapter 467. Prior to the issuance and renewal of an active license, or reactivation of an inactive license for midwives licensed under chapter 467, such licensees shall submit proof of coverage with each application.

Section 111. Subsection (1) of section 415.1085, Florida Statutes, is amended to read:

415.1085 Photographs, medical examinations, and X rays of abused or neglected aged persons or disabled adults.—

(1) Any person authorized by law to investigate cases of alleged abuse or neglect of an aged person or disabled adult may take or cause to be taken photographs of the areas of trauma visible on the aged person or disabled adult who is the subject of a report, and photographs of the surrounding environment, with the consent of the subject or guardian or guardians. If the areas of trauma visible on the aged person or disabled adult indicate a need for medical examination, or if the aged person or disabled adult verbally complains or otherwise exhibits distress as a result of injury through suspected adult abuse, neglect, or exploitation, or is alleged to have been sexually abused, the department may, with the consent of the subject or guardian or guardians, cause the aged person or disabled adult to be referred to a licensed physician or any emergency department in a hospital or health care facility for medical examinations and X rays, if deemed necessary by the examining physician. Such examinations may be performed by an advanced registered nurse practitioner licensed pursuant to part I of chapter 464. Medical examinations performed and X rays taken pursuant to this section shall be paid for by third-party reimbursement, if available, or by the subject or his or her guardian, if they are determined to be financially able to pay;

or, if neither is available, the department shall pay the costs within available emergency services funds.

Section 112. Paragraph (a) of subsection (1) of section 455.597 Florida Statutes, is amended to read:

455.597 Requirement for instruction on domestic violence.—

(1)(a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, part I of chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 1-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, as part of biennial relicensure or recertification. The course shall consist of information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

Section 113. Subsection (1) of section 455.604, Florida Statutes, is amended to read:

455.604 Requirement for instruction for certain licensees on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; part I of chapter 464; chapter 465; chapter 466; part II, part III, part V, or part X of chapter 468; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

Section 114. Paragraph (a) of subsection (2) of section 455.667, Florida Statutes, is amended to read:

455.667 Ownership and control of patient records; report or copies of records to be furnished.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the

following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(a) Certified nursing assistants regulated under part II of chapter 464 s. 400.211.

Section 115. Section 455.677, Florida Statutes, is amended to read:

455.677 Disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 465, chapter 466, part I of chapter 484, chapter 486, chapter 490, or chapter 491, and the department under the provisions of chapter 462, shall provide by rule for the disposition, under that chapter, of the medical records or records of a psychological nature of practitioners which are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available to patients and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

Section 116. Paragraph (b) of subsection (2) of section 455.694, Florida Statutes, is amended to read:

455.694 Financial responsibility requirements for certain health care practitioners.—

(2) The board or department may grant exemptions upon application by practitioners meeting any of the following criteria:

(b) Any person whose license or certification has become inactive under chapter 457, chapter 460, chapter 461, part I of chapter 464, chapter 466, or chapter 467 and who is not practicing in this state. Any person applying for reactivation of a license must show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after October 1, 1993, or the initial date of licensure in this state, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee must submit an affidavit stating that such licensee has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.

Section 117. Subsection (2) of section 455.707, Florida Statutes, is amended to read:

455.707 Treatment programs for impaired practitioners.—

(2) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a licensee

or recovered licensee under the jurisdiction of the Division of Medical Quality Assurance within the department, and at least one consultant must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, impaired.

Section 118. Subsection (2) of section 458.348, Florida Statutes, is amended to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(2) ESTABLISHMENT OF STANDARDS BY JOINT COMMITTEE.—The joint committee created by s. 464.003(3)(c) shall determine minimum standards for the content of established protocols pursuant to which an advanced registered nurse practitioner may perform medical acts identified and approved by the joint committee pursuant to s. 464.003(3)(c) or acts set forth in s. 464.012(3) and (4) and shall determine minimum standards for supervision of such acts by the physician, unless the joint committee determines that any act set forth in s. 464.012(3) or (4) is not a medical act. Such standards shall be based on risk to the patient and acceptable standards of medical care and shall take into account the special problems of medically underserved areas. The standards developed by the joint committee shall be adopted as rules by the Board of Nursing and the Board of Medicine for purposes of carrying out their responsibilities pursuant to part I of chapter 464 and this chapter, respectively, but neither board shall have disciplinary powers over the licensees of the other board.

Section 119. Section 464.001, Florida Statutes, is amended to read:

464.001 Short title.—This part may be cited ~~chapter shall be known as~~ the “Nurse Practice Act.”

Section 120. Section 464.002, Florida Statutes, is amended to read:

464.002 Purpose.—The sole legislative purpose in enacting this part ~~chapter~~ is to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It is the legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

Section 121. Section 464.003, Florida Statutes, is amended to read:

464.003 Definitions.—As used in this part ~~chapter~~:

(1) “Department” means the Department of Health.

(2) “Board” means the Board of Nursing ~~as created in this chapter~~.

(3)(a) “Practice of professional nursing” means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing

skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:

1. The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.
2. The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.
3. The supervision and teaching of other personnel in the theory and performance of any of the above acts.

(b) "Practice of practical nursing" means the performance of selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm and the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist.

The professional nurse and the practical nurse shall be responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

(c) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of postbasic specialized education, training, and experience, are proper to be performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the advanced registered nurse practitioner may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced registered nurse practitioner may also perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee composed of three members appointed by the Board of Nursing, two of whom shall be advanced registered nurse practitioners; three members appointed by the Board of Medicine, two of whom shall have had work experience with advanced registered nurse practitioners; and the secretary of the department or the secretary's designee. Each committee member appointed by a board shall be appointed to a term of 4 years unless a shorter term is required to establish or maintain staggered terms. The Board of Nursing shall adopt rules authorizing the performance of any such acts approved by the joint committee. Unless otherwise specified by the joint committee, such acts shall be performed under the general supervision of a practitioner licensed under chapter 458, chapter 459, or chapter 466 within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance. The department may, by rule, require that a copy of the protocol be filed with the department along with the notice required by s. 458.348.

(d) "Nursing diagnosis" means the observation and evaluation of physical or mental conditions, behaviors, signs and symptoms of illness, and reac-

tions to treatment and the determination as to whether such conditions, signs, symptoms, and reactions represent a deviation from normal.

(e) “Nursing treatment” means the establishment and implementation of a nursing regimen for the care and comfort of individuals, the prevention of illness, and the education, restoration, and maintenance of health.

(4) “Registered nurse” means any person licensed in this state to practice professional nursing.

(5) “Licensed practical nurse” means any person licensed in this state to practice practical nursing.

(6) “Advanced registered nurse practitioner” means any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice.

(7) “Approved program” means a nursing program conducted in a school, college, or university which is approved by the board pursuant to s. 464.019 for the education of nurses.

Section 122. Section 464.006, Florida Statutes, is amended to read:

464.006 Authority to make rules.—The board of Nursing has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part chapter conferring duties upon it.

Section 123. Subsection (3) of section 464.009, Florida Statutes, is amended to read:

464.009 Licensure by endorsement.—

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for an act which would constitute a violation of this part chapter until such time as the investigation is complete, at which time the provisions of s. 464.018 shall apply.

Section 124. Paragraphs (a) and (d) of subsection (1) and paragraph (b) of subsection (2) of section 464.016, Florida Statutes, are amended to read:

464.016 Violations and penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing advanced or specialized, professional or practical nursing, as defined in this part chapter, unless holding an active license or certificate to do so.

(d) Obtaining or attempting to obtain a license or certificate under this part chapter by misleading statements or knowing misrepresentation.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(b) Knowingly concealing information relating to violations of this part chapter.

Section 125. Paragraphs (i), (k), and (l) of subsection (1) and subsection (4) of section 464.018, Florida Statutes, are amended to read:

464.018 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(i) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part chapter.

(k) Failing to report to the department any person who the licensee knows is in violation of this part chapter or of the rules of the department or the board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant.

(l) Knowingly violating any provision of this part chapter, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(4) The board shall not reinstate the license of a nurse who has been found guilty by the board on three separate occasions of violations of this part chapter relating to the use of drugs or narcotics, which offenses involved the diversion of drugs or narcotics from patients to personal use or sale.

Section 126. Subsections (1), (2), and (3) of section 464.019, Florida Statutes, are amended to read:

464.019 Approval of nursing programs.—

(1) An institution desiring to conduct an approved program for the education of professional or practical nurses shall apply to the department and submit such evidence as may be required to show that it complies with the provisions of this part chapter and with the rules of the board. The application shall include a program review fee, as set by the board, not to exceed \$1,000.

(2) The board shall adopt rules regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training as are necessary to ensure that approved programs graduate nurses capable of competent practice under this part act.

(3) The department shall survey each institution applying for approval and submit its findings to the board. If the board is satisfied that the program meets the requirements of this part chapter and rules pursuant

thereto, it shall certify the program for approval and the department shall approve the program.

Section 127. Section 464.022, Florida Statutes, is amended to read:

464.022 Exceptions.—No provision of this part ~~chapter~~ shall be construed to prohibit:

(1) The care of the sick by friends or members of the family without compensation, the incidental care of the sick by domestic servants, or the incidental care of noninstitutionalized persons by a surrogate family.

(2) Assistance by anyone in the case of an emergency.

(3) The practice of nursing by students enrolled in approved schools of nursing.

(4) The practice of nursing by graduates of approved programs or the equivalent, pending the result of the first licensing examination for which they are eligible following graduation, provided they practice under direct supervision of a registered professional nurse. The board shall by rule define what constitutes direct supervision.

(5) The rendering of services by nursing assistants acting under the direct supervision of a registered professional nurse.

(6) Any nurse practicing in accordance with the practices and principles of the body known as the Church of Christ Scientist; nor shall any rule of the board apply to any sanitarium, nursing home, or rest home operated in accordance with the practices and principles of the body known as the Church of Christ Scientist.

(7) The practice of any legally qualified nurse or licensed attendant of another state who is employed by the United States Government, or any bureau, division, or agency thereof, while in the discharge of official duties.

(8) Any nurse currently licensed in another state from performing nursing services in this state for a period of 60 days after furnishing to the employer satisfactory evidence of current licensure in another state and having submitted proper application and fees to the board for licensure prior to employment. The board may extend this time for administrative purposes when necessary.

(9) The rendering of nursing services on a fee-for-service basis, or the reimbursement for nursing services directly to a nurse rendering such services by any government program, commercial insurance company, hospital or medical services plan, or any other third-party payor.

(10) The establishment of an independent practice by one or more nurses for the purpose of rendering to patients nursing services within the scope of the nursing license.

(11) The furnishing of hemodialysis treatments in a patient's home, using an assistant chosen by the patient, provided that the assistant is



properly trained, as defined by the board by rule, and has immediate telephonic access to a registered nurse who is licensed pursuant to this part chapter and who has dialysis training and experience.

(12) The practice of nursing by any legally qualified nurse of another state whose employment requires the nurse to accompany and care for a patient temporarily residing in this state for not more than 30 consecutive days, provided the patient is not in an inpatient setting, the board is notified prior to arrival of the patient and nurse, the nurse has the standing physician orders and current medical status of the patient available, and prearrangements with the appropriate licensed health care providers in this state have been made in case the patient needs placement in an inpatient setting.

(13) The practice of nursing by individuals enrolled in board-approved remedial courses.

Section 128. Section 464.023, Florida Statutes, is amended to read:

464.023 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this part chapter.

(2) Each licensee or holder of a certificate who was duly licensed or certified on June 30, 1979, shall be entitled to hold such license or certificate. Henceforth, such license or certificate shall be renewed in accordance with the provisions of this part act.

Section 129. Subsection (3) of section 464.027, Florida Statutes, is amended to read:

464.027 Registered nurse first assistant.—

(3) QUALIFICATIONS.—A registered nurse first assistant is any person who:

- (a) Is licensed as a registered nurse under this part chapter;
- (b) Is certified in perioperative nursing; and
- (c) Holds a certificate from, and has successfully completed, a recognized program.

Section 130. Subsection (6) of section 466.003, Florida Statutes, is amended to read:

466.003 Definitions.—As used in this chapter:

(6) “Dental assistant” means a person, other than a dental hygienist, who, under the supervision and authorization of a dentist, provides dental care services directly to a patient. This term shall not include a certified registered nurse anesthetist licensed under part I of chapter 464.

Section 131. Subsection (2) of section 467.003, Florida Statutes, is amended to read:

467.003 Definitions.—As used in this chapter, unless the context otherwise requires:

(2) “Certified nurse midwife” means a person who is licensed as an advanced registered nurse practitioner under part I of chapter 464 and who is certified to practice midwifery by the American College of Nurse Midwives.

Section 132. Paragraph (a) of subsection (2) of section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensure by endorsement.—

(2) The department may issue a temporary certificate to practice in areas of critical need to any midwife who is qualifying for licensure by endorsement under subsection (1), with the following restrictions:

(a) The Department of Health shall determine the areas of critical need, and the midwife so certified shall practice only in those specific areas, under the auspices of a physician licensed pursuant to chapter 458 or chapter 459, a certified nurse midwife licensed pursuant to part I of chapter 464, or a midwife licensed under this chapter, who has a minimum of 3 years’ professional experience. Such areas shall include, but not be limited to, health professional shortage areas designated by the United States Department of Health and Human Services.

Section 133. Paragraph (e) of subsection (2) of section 467.203, Florida Statutes, is amended to read:

467.203 Disciplinary actions; penalties.—

(2) When the department finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(e) Placement of the midwife on probation for such period of time and subject to such conditions as the department may specify, including requiring the midwife to submit to treatment; undertake further relevant education or training; take an examination; or work under the supervision of another licensed midwife, a physician, or a nurse midwife licensed under part I of chapter 464.

Section 134. Paragraph (a) of subsection (1) of section 468.505, Florida Statutes, is amended to read:

468.505 Exemptions; exceptions.—

(1) Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of:

(a) A person licensed in this state under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of chapter

464, chapter 465, chapter 466, chapter 480, chapter 490, or chapter 491, when engaging in the profession or occupation for which he or she is licensed, or of any person employed by and under the supervision of the licensee when rendering services within the scope of the profession or occupation of the licensee.

Section 135. Subsection (7) of section 483.041, Florida Statutes, is amended to read:

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

(7) “Licensed practitioner” means a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461; a dentist licensed under chapter 466; a person licensed under chapter 462; or an advanced registered nurse practitioner licensed under part I of chapter 464; or a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for nonresidents of the State of Florida, but who reside in the same state as the requesting licensed practitioner.

Section 136. Subsection (5) of section 483.801, Florida Statutes, is amended to read:

483.801 Exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(5) Advanced registered nurse practitioners licensed under part I of chapter 464 who perform provider-performed microscopy procedures (PPMP) in an exclusive-use laboratory setting.

Section 137. Paragraph (a) of subsection (4) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(4) For the purposes of this section:

(a) The term “psychotherapist” means any person licensed pursuant to chapter 458, chapter 459, part I of chapter 464, chapter 490, or chapter 491, or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.

Section 138. Subsection (5) of section 550.24055, Florida Statutes, is amended to read:

550.24055 Use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.—

(5) This section does not apply to the possession and use of controlled or chemical substances that are prescribed as part of the care and treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, part I of chapter 464, or chapter 466.

Section 139. Paragraph (h) of subsection (4) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(h) As used in this subsection:

1. “Health care provider” means hospitals licensed under chapter 395; physicians licensed under chapter 458; osteopathic physicians licensed under chapter 459; podiatric physicians licensed under chapter 461; dentists licensed under chapter 466; chiropractic physicians licensed under chapter 460; naturopaths licensed under chapter 462; nurses licensed under part I of chapter 464; midwives licensed under chapter 467; clinical laboratories registered under chapter 483; physician assistants licensed under chapter 458 or chapter 459; physical therapists and physical therapist assistants licensed under chapter 486; health maintenance organizations certificated under part I of chapter 641; ambulatory surgical centers licensed under chapter 395; other medical facilities as defined in subparagraph 2.; blood banks, plasma centers, industrial clinics, and renal dialysis facilities; or professional associations, partnerships, corporations, joint ventures, or other associations for professional activity by health care providers.

2. “Other medical facility” means a facility the primary purpose of which is to provide human medical diagnostic services or a facility providing non-surgical human medical treatment, to which facility the patient is admitted and from which facility the patient is discharged within the same working day, and which facility is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy or an office maintained by a physician or dentist for the practice of medicine shall not be construed to be an “other medical facility.”

3. “Health care facility” means any hospital licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, ambulatory surgical center licensed under chapter 395, or other medical facility as defined in subparagraph 2.

Section 140. Paragraph (b) of subsection (1) of section 627.357, Florida Statutes, is amended to read:

627.357 Medical malpractice self-insurance.—

(1) DEFINITIONS.—As used in this section, the term:

(b) “Health care provider” means any:

1. Hospital licensed under chapter 395.
2. Physician licensed, or physician assistant licensed, under chapter 458.
3. Osteopathic physician or physician assistant licensed under chapter 459.

4. Podiatric physician licensed under chapter 461.
5. Health maintenance organization certificated under part I of chapter 641.
6. Ambulatory surgical center licensed under chapter 395.
7. Chiropractic physician licensed under chapter 460.
8. Psychologist licensed under chapter 490.
9. Optometrist licensed under chapter 463.
10. Dentist licensed under chapter 466.
11. Pharmacist licensed under chapter 465.
12. Registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464.
13. Other medical facility.
14. Professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., 4., 7., 8., 9., 10., 11., and 12. for professional activity.

Section 141. Subsection (6) of section 627.9404, Florida Statutes, is amended to read:

627.9404 Definitions.—For the purposes of this part:

(6) “Licensed health care practitioner” means any physician, nurse licensed under part I of chapter 464, or psychotherapist licensed under chapter 490 or chapter 491, or any individual who meets any requirements prescribed by rule by the department.

Section 142. Subsection (21) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(21) Notwithstanding any other provision of law, health maintenance policies or contracts which provide anesthesia coverage, benefits, or services shall offer to the subscriber, if requested and available, the services of a certified registered nurse anesthetist licensed pursuant to part I of chapter 464.

Section 143. Subsection (8) of section 766.101, Florida Statutes, is amended to read:

766.101 Medical review committee, immunity from liability.—

(8) No cause of action of any nature by a person licensed pursuant to chapter 458, chapter 459, chapter 461, chapter 463, part I of chapter 464, chapter 465, or chapter 466 shall arise against another person licensed

pursuant to chapter 458, chapter 459, chapter 461, chapter 463, part I of chapter 464, chapter 465, or chapter 466 for furnishing information to a duly appointed medical review committee, to an internal risk management program established under s. 395.0197, to the Department of Business and Professional Regulation, or to the appropriate regulatory board if the information furnished concerns patient care at a facility licensed pursuant to part I of chapter 395 where both persons provide health care services, if the information is not intentionally fraudulent, and if the information is within the scope of the functions of the committee, department, or board. However, if such information is otherwise available from original sources, it is not immune from discovery or use in a civil action merely because it was presented during a proceeding of the committee, department, or board.

Section 144. Subsection (2) of section 766.110, Florida Statutes, is amended to read:

**766.110 Liability of health care facilities.—**

(2) Every hospital licensed under chapter 395 may carry liability insurance or adequately insure itself in an amount of not less than \$1.5 million per claim, \$5 million annual aggregate to cover all medical injuries to patients resulting from negligent acts or omissions on the part of those members of its medical staff who are covered thereby in furtherance of the requirements of ss. 458.320 and 459.0085. Self-insurance coverage extended hereunder to a member of a hospital's medical staff meets the financial responsibility requirements of ss. 458.320 and 459.0085 if the physician's coverage limits are not less than the minimum limits established in ss. 458.320 and 459.0085 and the hospital is a verified trauma center as of July 1, 1990, that has extended self-insurance coverage continuously to members of its medical staff for activities both inside and outside of the hospital since January 1, 1987. Any insurer authorized to write casualty insurance may make available, but shall not be required to write, such coverage. The hospital may assess on an equitable and pro rata basis the following professional health care providers for a portion of the total hospital insurance cost for this coverage: physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, podiatric physicians licensed under chapter 461, dentists licensed under chapter 466, and nurses licensed under part I of chapter 464. The hospital may provide for a deductible amount to be applied against any individual health care provider found liable in a law suit in tort or for breach of contract. The legislative intent in providing for the deductible to be applied to individual health care providers found negligent or in breach of contract is to instill in each individual health care provider the incentive to avoid the risk of injury to the fullest extent and ensure that the citizens of this state receive the highest quality health care obtainable.

Section 145. Paragraph (d) of subsection (3) of section 766.1115, Florida Statutes, is amended to read:

**766.1115 Health care providers; creation of agency relationship with governmental contractors.—**

(3) **DEFINITIONS.**—As used in this section, the term:

- (d) “Health care provider” or “provider” means:
1. A birth center licensed under chapter 383.
  2. An ambulatory surgical center licensed under chapter 395.
  3. A hospital licensed under chapter 395.
  4. A physician or physician assistant licensed under chapter 458.
  5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.
  6. A chiropractic physician licensed under chapter 460.
  7. A podiatric physician licensed under chapter 461.
  8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.
  9. A midwife licensed under chapter 467.
  10. A health maintenance organization certificated under part I of chapter 641.
  11. A health care professional association and its employees or a corporate medical group and its employees.
  12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
  13. A dentist or dental hygienist licensed under chapter 466.
  14. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(c) of the Internal Revenue Code which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

Section 146. Subsection (1) of section 877.111, Florida Statutes, is amended to read:

877.111 Inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances; penalties.—

(1) It is unlawful for any person to inhale or ingest, or to possess with intent to breathe, inhale, or drink, any compound, liquid, or chemical con-

taining toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, ethylene glycol monomethyl ether acetate, cyclohexanone, nitrous oxide, diethyl ether, alkyl nitrites (butyl nitrite), or any similar substance for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual, or mental processes. This section does not apply to the possession and use of these substances as part of the care or treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, part I of chapter 464, or chapter 466 or to beverages controlled by the provisions of chapter 561, chapter 562, chapter 563, chapter 564, or chapter 565.

Section 147. Subsection (6) of section 945.602, Florida Statutes, is amended to read:

945.602 State of Florida Correctional Medical Authority; creation; members.—

(6) At least one member of the authority must be a nurse licensed under part I of chapter 464 and have at least 5 years' experience in the practice of nursing.

Section 148. Subsection (2) of section 960.28, Florida Statutes, is amended to read:

960.28 Payment for victims' initial forensic physical examinations.—

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim who reports a violation of chapter 794 or chapter 800 to a law enforcement officer. Such payment shall be made regardless of whether or not the victim is covered by health or disability insurance. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$250 with respect to any violation. Payment may not be made for an initial forensic physical examination unless the law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 149. Subsection (36) of section 984.03, Florida Statutes, is amended to read:



984.03 Definitions.—When used in this chapter, the term:

(36) “Licensed health care professional” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

Section 150. Subsection (37) of section 985.03, Florida Statutes, is amended to read:

985.03 Definitions.—When used in this chapter, the term:

(37) “Licensed health care professional” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

Section 151. Section 455.557, Florida Statutes, is amended to read:

455.557 Standardized credentialing for health care practitioners.—

(1) INTENT.—The Legislature recognizes that an efficient and effective health care practitioner credentialing program helps to ensure access to quality health care and also recognizes that health care practitioner credentialing activities have increased significantly as a result of health care reform and recent changes in health care delivery and reimbursement systems. Moreover, the resulting duplication of health care practitioner credentialing activities is unnecessarily costly and cumbersome for both the practitioner and the entity granting practice privileges. Therefore, it is the intent of this section that a credentials collection program be established which provides that, once a health care practitioner’s core credentials data are collected, they need not be collected again, except for corrections, updates, and modifications thereto. Participation under this section shall ~~initially~~ include those individuals licensed under chapter 458, chapter 459, chapter 460, ~~or~~ chapter 461, or s. 464.012. However, the department shall, with the approval of the applicable board, include other professions under the jurisdiction of the Division of Medical Quality Assurance in this program, provided they meet the requirements of s. 455.565 or s. 455.56503.

(2) DEFINITIONS.—As used in this section, the term:

(a) ~~“Advisory council” or “council” means the Credentials Advisory Council.~~

(a)(b) “Certified” or “accredited,” as applicable, means approved by a quality assessment program, from the National Committee for Quality Assurance, the Joint Commission on Accreditation of Healthcare Organizations, the American Accreditation HealthCare Commission/URAC, or any such other nationally recognized and accepted organization authorized by the department, used to assess and certify any credentials verification program, entity, or organization that verifies the credentials of any health care practitioner.

~~(b)(c)~~ “Core credentials data” means the following data: current name, any former name, and any alias, any professional education, professional training, licensure, current Drug Enforcement Administration certification, social security number, specialty board certification, Educational Commission for Foreign Medical Graduates certification, hospital or other institutional affiliations, evidence of professional liability coverage or evidence of financial responsibility as required by s. 458.320, ~~or s. 459.0085,~~ or s. 455.694, history of claims, suits, judgments, or settlements, final disciplinary action reported pursuant to s. 455.565(1)(a)8. or s. 455.56503(1)(a)8., and Medicare or Medicaid sanctions.

~~(c)(d)~~ “Credential” or “credentialing” means the process of assessing and verifying the qualifications of a licensed health care practitioner or applicant for licensure as a health care practitioner.

~~(d)(e)~~ “Credentials verification organization” means any organization certified or accredited as a credentials verification organization.

~~(e)(f)~~ “Department” means the Department of Health, Division of Medical Quality Assurance.

~~(f)(g)~~ “Designated credentials verification organization” means the credentials verification organization which is selected by the health care practitioner, if the health care practitioner chooses to make such a designation.

~~(g)(h)~~ “Drug Enforcement Administration certification” means certification issued by the Drug Enforcement Administration for purposes of administration or prescription of controlled substances. Submission of such certification under this section must include evidence that the certification is current and must also include all current addresses to which the certificate is issued.

~~(h)(i)~~ “Health care entity” means:

1. Any health care facility or other health care organization licensed or certified to provide approved medical and allied health services in this state;
2. Any entity licensed by the Department of Insurance as a prepaid health care plan or health maintenance organization or as an insurer to provide coverage for health care services through a network of providers; or
3. Any accredited medical school in this state.

~~(i)(j)~~ “Health care practitioner” means any person licensed, or, for credentialing purposes only, any person applying for licensure, under chapter 458, chapter 459, chapter 460, ~~or chapter 461,~~ or s. 464.012 or any person licensed or applying for licensure under a chapter subsequently made subject to this section by the department with the approval of the applicable board, except a person registered or applying for registration pursuant to s. 458.345 or s. 459.021.

~~(j)(k)~~ “Hospital or other institutional affiliations” means each hospital or other institution for which the health care practitioner or applicant has

provided medical services. Submission of such information under this section must include, for each hospital or other institution, the name and address of the hospital or institution, the staff status of the health care practitioner or applicant at that hospital or institution, and the dates of affiliation with that hospital or institution.

(k)~~(l)~~ “National accrediting organization” means an organization that awards accreditation or certification to hospitals, managed care organizations, credentials verification organizations, or other health care organizations, including, but not limited to, the Joint Commission on Accreditation of Healthcare Organizations, the American Accreditation HealthCare Commission/URAC, and the National Committee for Quality Assurance.

(l)~~(m)~~ “Professional training” means any internship, residency, or fellowship relating to the profession for which the health care practitioner is licensed or seeking licensure.

(m)~~(n)~~ “Specialty board certification” means certification in a specialty issued by a specialty board recognized by the board in this state that regulates the profession for which the health care practitioner is licensed or seeking licensure.

(3) STANDARDIZED CREDENTIALS VERIFICATION PROGRAM.—

(a) Every health care practitioner shall:

1. Report all core credentials data to the department which is not already on file with the department, either by designating a credentials verification organization to submit the data or by submitting the data directly.

2. Notify the department within 45 days of any corrections, updates, or modifications to the core credentials data either through his or her designated credentials verification organization or by submitting the data directly. Corrections, updates, and modifications to the core credentials data provided the department under this section shall comply with the updating requirements of s. 455.565(3) or s. 455.56503(3) related to profiling.

(b) The department shall:

1. Maintain a complete, current file of core credentials data on each health care practitioner, which shall include all updates provided in accordance with subparagraph (a)2.

2. Release the core credentials data that is otherwise confidential or exempt from the provisions of chapter 119 and s. 24(a), Art. I of the State Constitution and any corrections, updates, and modifications thereto, if authorized by the health care practitioner.

3. Charge a fee to access the core credentials data, which may not exceed the actual cost, including prorated setup and operating costs, pursuant to the requirements of chapter 119. ~~The actual cost shall be set in consultation with the advisory council.~~

4. ~~Develop, in consultation with the advisory council, standardized forms to be used by the health care practitioner or designated credentials verification organization for the initial reporting of core credentials data, for the health care practitioner to authorize the release of core credentials data, and for the subsequent reporting of corrections, updates, and modifications thereto.~~

~~5. Establish a Credentials Advisory Council, consisting of 13 members, to assist the department as provided in this section. The secretary, or his or her designee, shall serve as one member and chair of the council and shall appoint the remaining 12 members. Except for any initial lesser term required to achieve staggering, such appointments shall be for 4-year staggered terms, with one 4-year reappointment, as applicable. Three members shall represent hospitals, and two members shall represent health maintenance organizations. One member shall represent health insurance entities. One member shall represent the credentials verification industry. Two members shall represent physicians licensed under chapter 458. One member shall represent osteopathic physicians licensed under chapter 459. One member shall represent chiropractic physicians licensed under chapter 460. One member shall represent podiatric physicians licensed under chapter 461.~~

(c) A registered credentials verification organization may be designated by a health care practitioner to assist the health care practitioner to comply with the requirements of subparagraph (a)2. A designated credentials verification organization shall:

1. Timely comply with the requirements of subparagraph (a)2., pursuant to rules adopted by the department.

2. Not provide the health care practitioner's core data, including all corrections, updates, and modifications, without the authorization of the practitioner.

(d) This section shall not be construed to restrict in any way the authority of the health care entity to credential and to approve or deny an application for hospital staff membership, clinical privileges, or managed care network participation.

(4) DUPLICATION OF DATA PROHIBITED.—

(a) A health care entity or credentials verification organization is prohibited from collecting or attempting to collect duplicate core credentials data from any health care practitioner if the information is available from the department. This section shall not be construed to restrict the right of any health care entity or credentials verification organization to collect additional information from the health care practitioner which is not included in the core credentials data file. This section shall not be construed to prohibit a health care entity or credentials verification organization from obtaining all necessary attestation and release form signatures and dates.

(b) Effective July 1, 2002, a state agency in this state which credentials health care practitioners may not collect or attempt to collect duplicate core

credentials data from any individual health care practitioner if the information is already available from the department. This section shall not be construed to restrict the right of any such state agency to request additional information not included in the core credential data file, but which is deemed necessary for the agency's specific credentialing purposes.

(5) **STANDARDS AND REGISTRATION.**—Any credentials verification organization that does business in this state must be fully accredited or certified as a credentials verification organization by a national accrediting organization as specified in paragraph (2)(a)(b) and must register with the department. The department may charge a reasonable registration fee, ~~set in consultation with the advisory council,~~ not to exceed an amount sufficient to cover its actual expenses in providing and enforcing such registration. The department shall establish by rule for biennial renewal of such registration. Failure by a registered credentials verification organization to maintain full accreditation or certification, to provide data as authorized by the health care practitioner, to report to the department changes, updates, and modifications to a health care practitioner's records within the time period specified in subparagraph (3)(a)2., or to comply with the prohibition against collection of duplicate core credentials data from a practitioner may result in denial of an application for renewal of registration or in revocation or suspension of a registration.

(6) **LIABILITY.**—No civil, criminal, or administrative action may be instituted, and there shall be no liability, against any registered credentials verification organization or health care entity on account of its reliance on any data obtained directly from the department.

(7) **LIABILITY INSURANCE REQUIREMENTS.**—Each credentials verification organization doing business in this state shall maintain liability insurance appropriate to meet the certification or accreditation requirements established in this section.

(8) **RULES.**—The department, ~~in consultation with the advisory council,~~ shall adopt rules necessary to develop and implement the standardized core credentials data collection program established by this section.

~~(9) **COUNCIL ABOLISHED; DEPARTMENT AUTHORITY.**—The council shall be abolished October 1, 1999. After the council is abolished, all duties of the department required under this section to be in consultation with the council may be carried out by the department on its own.~~

Section 152. Section 455.56503, Florida Statutes, is created to read:

455.56503 Advanced registered nurse practitioners; information required for certification.—

(1)(a) Each person who applies for initial certification under s. 464.012 must, at the time of application, and each person certified under s. 464.012 who applies for certification renewal must, in conjunction with the renewal of such certification and under procedures adopted by the Department of Health, and in addition to any other information that may be required from

the applicant, furnish the following information to the Department of Health:

1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.

2. The name of each location at which the applicant practices.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.

5. The year that the applicant received initial certification and began practicing the profession in any jurisdiction and the year that the applicant received initial certification in this state.

6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disci-

plinary action is under appeal if the disciplinary action is reported in the applicant's profile.

(b) In addition to the information required under paragraph (a), each applicant for initial certification or certification renewal must provide the information required of licensees pursuant to s. 455.697.

(2) The Department of Health shall send a notice to each person certified under s. 464.012 at the certificateholder's last known address of record regarding the requirements for information to be submitted by advanced registered nurse practitioners pursuant to this section in conjunction with the renewal of such certificate.

(3) Each person certified under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under chapter 464 and s. 455.624(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

(a) Refuse to issue a certificate to any person applying for initial certification who fails to submit and update the required information.

(b) Issue a citation to any certificateholder who fails to submit and update the required information and may fine the certificateholder up to \$50 for each day that the certificateholder is not in compliance with this subsection. The citation must clearly state that the certificateholder may choose, in lieu of accepting the citation, to follow the procedure under s. 455.621. If the certificateholder disputes the matter in the citation, the procedures set forth in s. 455.621 must be followed. However, if the certificateholder does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the certificateholder's last known address.

(4)(a) An applicant for initial certification under s. 464.012 must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check of the applicant.

(b) An applicant for renewed certification who has not previously submitted a set of fingerprints to the Department of Health for purposes of certification must submit a set of fingerprints to the department as a condition of the initial renewal of his or her certificate after the effective date of this section. The applicant must submit the fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check. For subsequent renewals, the applicant for renewed

certification must only submit information necessary to conduct a statewide criminal history check, along with payment in an amount equal to the costs incurred by the Department of Health for a statewide criminal history check.

(c)1. The Department of Health shall submit the fingerprints provided by an applicant for initial certification to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.

2. The department shall submit the fingerprints provided by an applicant for the initial renewal of certification to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's certificate after the effective date of this section.

3. For any subsequent renewal of the applicant's certificate, the department shall submit the required information for a statewide criminal history check of the applicant to the Florida Department of Law Enforcement.

(d) Any applicant for initial certification or renewal of certification as an advanced registered nurse practitioner who submits to the Department of Health a set of fingerprints and information required for the criminal history check required under this section shall not be required to provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Family Services for employment or licensure with such agency or department, if the applicant has undergone a criminal history check as a condition of initial certification or renewal of certification as an advanced registered nurse practitioner with the Department of Health, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services shall obtain criminal history information for employment or licensure of persons certified under s. 464.012 by such agency or department from the Department of Health's health care practitioner credentialing system.

(5) Each person who is required to submit information pursuant to this section may submit additional information to the Department of Health. Such information may include, but is not limited to:

(a) Information regarding publications in peer-reviewed professional literature within the previous 10 years.

(b) Information regarding professional or community service activities or awards.

(c) Languages, other than English, used by the applicant to communicate with patients or clients and identification of any translating service that



may be available at the place where the applicant primarily conducts his or her practice.

(d) An indication of whether the person participates in the Medicaid program.

Section 153. Section 455.5651, Florida Statutes, is amended to read:

455.5651 Practitioner profile; creation.—

(1) Beginning July 1, 1999, the Department of Health shall compile the information submitted pursuant to s. 455.565 into a practitioner profile of the applicant submitting the information, except that the Department of Health may develop a format to compile uniformly any information submitted under s. 455.565(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 455.56503 into a practitioner profile of the applicant submitting the information.

(2) On the profile published required under subsection (1), the department shall indicate if the information provided under s. 455.565(1)(a)7. or s. 455.56503(1)(a)7. is not corroborated by a criminal history check conducted according to this subsection. If the information provided under s. 455.565(1)(a)7. or s. 455.56503(1)(a)7. is corroborated by the criminal history check, the fact that the criminal history check was performed need not be indicated on the profile. The department, or the board having regulatory authority over the practitioner acting on behalf of the department, shall investigate any information received by the department or the board when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice.

(3) The Department of Health may include in each practitioner's practitioner profile that criminal information that directly relates to the practitioner's ability to competently practice his or her profession. The department must include in each practitioner's practitioner profile the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

(4) The Department of Health shall include, with respect to a practitioner licensed under chapter 458 or chapter 459, a statement of how the practitioner has elected to comply with the financial responsibility requirements of s. 458.320 or s. 459.0085. The department shall include, with respect to practitioners subject to s. 455.694, a statement of how the practitioner has elected to comply with the financial responsibility requirements of that section. The department shall include, with respect to practitioners licensed under chapter 458, chapter 459, or chapter 461, information relating to liability actions which has been reported under s. 455.697 or s. 627.912 within the previous 10 years for any paid claim that exceeds \$5,000. Such claims information shall be reported in the context of comparing an individual practitioner's claims to the experience of other practitioners physicians within the same specialty, or profession if the practitioner is not a specialist, to the extent such information is available to the Department of Health. If information relating to a liability action is included in a practitioner's practitioner profile, the profile must also include the following statement: "Settle-

ment of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the practitioner ~~physician~~. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.”

(5) The Department of Health may not include disciplinary action taken by a licensed hospital or an ambulatory surgical center in the practitioner profile.

(6) The Department of Health may include in the practitioner’s practitioner profile any other information that is a public record of any governmental entity and that relates to a practitioner’s ability to competently practice his or her profession. However, the department must consult with the board having regulatory authority over the practitioner before such information is included in his or her profile.

(7) Upon the completion of a practitioner profile under this section, the Department of Health shall furnish the practitioner who is the subject of the profile a copy of it. The practitioner has a period of 30 days in which to review the profile and to correct any factual inaccuracies in it. The Department of Health shall make the profile available to the public at the end of the 30-day period. The department shall make the profiles available to the public through the World Wide Web and other commonly used means of distribution.

(8) Making a practitioner profile available to the public under this section does not constitute agency action for which a hearing under s. 120.57 may be sought.

Section 154. Section 455.5653, Florida Statutes, is amended to read:

455.5653 Practitioner profiles; data storage.—Effective upon this act becoming a law, the Department of Health must develop or contract for a computer system to accommodate the new data collection and storage requirements under this act pending the development and operation of a computer system by the Department of Health for handling the collection, input, revision, and update of data submitted by physicians as a part of their initial licensure or renewal to be compiled into individual practitioner profiles. The Department of Health must incorporate any data required by this act into the computer system used in conjunction with the regulation of health care professions under its jurisdiction. ~~The department must develop, by the year 2000, a schedule and procedures for each practitioner within a health care profession regulated within the Division of Medical Quality Assurance to submit relevant information to be compiled into a profile to be made available to the public.~~ The Department of Health is authorized to contract with and negotiate any interagency agreement necessary to develop and implement the practitioner profiles. The Department of Health shall have access to any information or record maintained by the Agency for Health Care Administration, including any information or record that is otherwise confidential and exempt from the provisions of chapter 119 and s. 24(a), Art. I of the State Constitution, so that the Department of Health

may corroborate any information that ~~practitioners~~ physicians are required to report under s. 455.565 or s. 455.56503.

Section 155. Section 455.5654, Florida Statutes, is amended to read:

455.5654 Practitioner profiles; rules; workshops.—Effective upon this act becoming a law, the Department of Health shall adopt rules for the form of a practitioner profile that the agency is required to prepare. The Department of Health, pursuant to chapter 120, must hold public workshops for purposes of rule development to implement this section. An agency to which information is to be submitted under this act may adopt by rule a form for the submission of the information required under s. 455.565 or s. 455.56503.

Section 156. Subsection (20) of section 400.462, Florida Statutes, is repealed.

Section 157. Paragraph (d) of subsection (4) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee; provisional license; temporary permit.—

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

(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 through the agency and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the licensee 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 requested of and granted by the agency as set forth in chapter 435.

Section 158. Subsection (3) is added to section 400.484, Florida Statutes, to read:

400.484 Right of inspection; deficiencies; fines.—

(3) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

Section 159. Section 400.487, Florida Statutes, is amended to read:

400.487 Home health service agreements; physician's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(1) Services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient's legal representative specifying the home health services to be provided, the rates or charges for services paid with private funds, and the method of payment. ~~The home health agency providing skilled care must make an assessment of the patient's needs within 48 hours after the start of services.~~

(2) When required by the provisions of chapter 464, part I, part III, or part V of chapter 468, or chapter 486, the attending physician for a patient who is to receive skilled care must establish treatment orders. The treatment orders must be signed by the physician within 30 ~~24~~ days after the start of care and must be reviewed, as at least every 62 days or more frequently as if the patient's illness requires, by the physician in consultation with home health agency personnel that provide services to the patient.

(3) A home health agency shall arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction and approval. ~~If a client is accepted for home health aide services or homemaker or companion services and such services do not require a physician's order, the home health agency shall establish a service provision plan and maintain a record of the services provided.~~

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

(5) When nursing services are ordered, the home health agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by qualified personnel who are on the payroll of, and to whom an IRS payroll form W-2 will be issued by, the home health agency. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting home health agency. The admitting home health agency is fully responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

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

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders. Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have

engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency.

Section 160. Section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:

(1) The home health aide competency test and home health aide training. ~~The qualifications, minimum training requirements, and supervision requirements of all home health agency personnel.~~ The agency shall create the home health aide competency test and establish the curriculum and instructor qualifications for home health aide training. Licensed home health agencies may provide this training and shall furnish documentation of such training to other licensed home health agencies upon request. Successful passage of the competency test by home health aides may be substituted for the training required under this section and any rule adopted pursuant thereto.

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

~~(2)—Requirements for prospective employees. A home health agency must require prospective employees and contractors to submit an employment or contractual history, and it must verify the employment or contractual history unless through diligent efforts such verification is not possible. The agency shall prescribe by rule the minimum requirements for establishing that diligent efforts have been made. There is no monetary liability on the part of, and no cause of action for damages arising against, a former employer of a prospective employee of or prospective independent contractor with a licensed home health agency who reasonably and in good faith communicates his or her honest opinions about the former employee's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.~~

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

(4)(3) Licensure application and renewal.

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

(5)—~~Procedures for administering drugs and biologicals.~~

(6) Information to be included in Procedures for maintaining patients' records.

~~(7) Ensuring that home health services are provided in accordance with the treatment orders established for each patient for whom physician orders are required.~~

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

~~(9) Standards for contractual arrangements for the provision of home health services by providers not employed by the home health agency to whom the patient has been admitted.~~

Section 161. Paragraph (d) of subsection (2) and subsection (13) of section 400.506, Florida Statutes, are amended, subsection (17) is renumbered as subsection (18), and a new subsection (17) is added to said section, to read:

400.506 Licensure of nurse registries; requirements; penalties.—

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

(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 through the agency and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard 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 requested of and granted by the agency as set forth in chapter 435.

(13) Each nurse registry must comply with the procedures set forth in s. ~~400.512~~ 400.497(3) for maintaining records of the employment history of all persons referred for contract and is subject to the standards and conditions set forth in that section s. 400.512. However, an initial screening may not be required for persons who have been continuously registered with the nurse registry since September 30, 1990.

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

Section 162. Paragraph (d) of subsection (4) of section 400.509, Florida Statutes, is amended, subsection (14) is renumbered as subsection (15), and a new subsection (14) is added to said section, to read:

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—

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

(d) A provisional registration 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 through the agency and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard registration 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 if a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

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

Section 163. Section 400.512, Florida Statutes, is amended to read:

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

(1) The agency may grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.

(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each companion or homemaker service registered under s. 400.509 must sign an affidavit annually, under penalty of perjury, stating that all personnel hired, contracted with, or registered on or after October 1, 1994, who enter the home of a patient or client in their service capacity have been screened and that its remaining personnel have worked for the home health agency or registrant continuously since before October 1, 1994.

(3) As a prerequisite to operating as a home health agency, nurse registry, or companion or homemaker service under s. 400.509, the administrator or managing employee, respectively, must submit to the agency his or her name and any other information necessary to conduct a complete screening according to this section. The agency shall submit the information to the Department of Law Enforcement and shall conduct a search for any report of confirmed abuse ~~the department's abuse hotline for state processing~~. The agency shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency, must obtain and supply within 30 days the missing disposition information to the agency. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.

(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened through the agency for any reports of confirmed abuse ~~central abuse registry and tracking system of the department and for any criminal record from~~ by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or companion or homemaker services registered under s. 400.509.

(5)(a) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or companion or homemaker service registered under s. 400.509, that, upon notice of a confirmed report of adult abuse, neglect, or exploitation through the agency, terminates the employee or contractor against whom the report was issued, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.

(b) If a home health agency is asked about a person who was employed by or contracted with that agency, there is no monetary liability on the part of, and no cause of action for damages arising against, a former employer of the person for that agency, who reasonably and in good faith communicates his or her honest opinions about the former caregiver's job performance. This paragraph does not affect the official immunity of an officer or employee of a public corporation.

(6) The costs of processing the statewide correspondence criminal records checks ~~and the search of the department's central abuse hotline~~ must be



borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s. 400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

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

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

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

3. Use information from the criminal records or the agency's reports of confirmed abuse central abuse hotline obtained under this section for any purpose other than screening that person for employment as specified in this section or release such information to any other person for any purpose other than screening for employment under this section.

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

Section 164. Subsection (5) of section 455.587, Florida Statutes, is amended to read:

455.587 Fees; receipts; disposition.—

(5) All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this part. The Legislature shall appropriate funds from this trust fund sufficient to carry out this part and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this part for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The regulation by the department of professions, as defined in this part, shall be financed solely from revenue collected by it from fees and other charges and deposited in the Medical

Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. The department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 455.644.

Section 165. There is appropriated from the Medical Quality Assurance Trust Fund to the Department of Health the sum of \$280,000 to implement the provisions of this act.

Section 166. Subsection (2) of section 766.106, Florida Statutes, is amended to read:

766.106 Notice before filing action for medical malpractice; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(2) ~~After completion of presuit investigation pursuant to s. 766.203 and prior to filing a claim for medical malpractice, a claimant shall notify each prospective defendant and, if any prospective defendant is a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466, the Department of Health by certified mail, return receipt requested, of intent to initiate litigation for medical malpractice. Following the initiation of a suit alleging medical malpractice with a court of competent jurisdiction, and service of the complaint upon a defendant, the claimant shall provide a copy of the complaint to the Department of Health. Notice to the Department of Health must include the full name and address of the claimant; the full names and any known addresses of any health care providers licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who are prospective defendants identified at the time; the date and a summary of the occurrence giving rise to the claim; and a description of the injury to the claimant. The requirement of providing the complaint for notice to the Department of Health does not impair the claimant's legal rights or ability to seek relief for his or her claim, and the notice provided to the department is not discoverable or admissible in any civil or administrative action. The Department of Health shall review each incident and determine whether it involved conduct by a licensee which is potentially subject to disciplinary action, in which case the provisions of s. 455.621 apply.~~

Section 167. The Agency for Health Care Administration is directed to conduct a cost and feasibility study regarding the implementation of the

federal "Ticket to Work and Work Incentives Act of 1999" in Florida and to report its findings to the Speaker of the House of Representatives and the President of the Senate no later than December 1, 2000.

Section 168. Subsection (11) of section 240.241, Florida Statutes, is amended to read:

240.241 Divisions of sponsored research at state universities.—

(11) The sponsored research programs of the Institute of Food and Agricultural Sciences, the University of Florida Health Science Center, and the engineering and industrial experiment station shall continue to be centered at the University of Florida as heretofore provided by law. Indirect cost reimbursements of all grants deposited in the Division of Sponsored Research shall be distributed directly to the above units in direct proportion to the amounts earned by each unit.

Section 169. The Agency for Health Care Administration is authorized to contract with specialty prepaid health plans and pay them on a prepaid capitated basis to provide Medicaid benefits to Medicaid-eligible recipients who have human immunodeficiency syndrome (HIV) or acquired immunodeficiency syndrome (AIDS). The agency shall apply for and is authorized to implement federal waivers or other necessary federal authorization to implement the prepaid health plans authorized by this section. The agency shall procure the specialty prepaid health plans through a competitive procurement. In awarding a contract to a managed care plan, the agency shall take into account price, quality, accessibility, linkages to community-based organizations, and the comprehensiveness of the benefit package offered by the plan. The agency may bid the HIV/AIDS specialty plans on a county, regional, or statewide basis. Qualified plans must be licensed under chapter 641, Florida Statutes. The agency shall monitor and evaluate the implementation of this waiver program if it is approved by the Federal Government and shall report on its status to the President of the Senate and the Speaker of the House of Representatives by February 1, 2001.

Section 170. Except as otherwise provided in this act, this act shall take effect July 1, 2000.

Approved by the Governor June 19, 2000.

Filed in Office Secretary of State June 19, 2000.