CHAPTER 2000-367

Committee Substitute for Senate Bill No. 2034

An act relating to health care; providing an appropriation for continued review of clinical laboratory services for kidney dialysis patients and requiring a report thereon; amending s. 20.43, F.S.; requiring the department to include certain assessments, projections, and recommendations in the department's strategic plan rather than in the state health plan; authorizing the department to hold copyrights, trademarks, and service marks and to enforce its rights to them; amending s. 39.303, F.S.; providing duties of the Children's Medical Services Program within the department with respect to child protection teams; amending s. 120.80, F.S.; revising procedures for hearings conducted with respect to the Brain and Spinal Cord Injury Program; amending s. 154.011, F.S.; revising duties of the department with respect to monitoring and administering certain primary care programs; amending s. 215.5602, F.S.; revising the goals of and expenditures for the Florida Biomedical Research Program within the Lawton Chiles Endowment Fund; amending s. 381.0011, F.S.; providing requirements for the department's strategic plan; amending s. 381.003, F.S.; requiring the department to develop an immunization registry; requiring that the registry include all children born in this state; providing procedures under which a parent or guardian may elect not to participate in the immunization registry; providing for the electronic transfer of records between health care professionals and other agencies; authorizing the department to adopt rules for administering the registry; amending s. 381.0031, F.S.; authorizing the department to obtain and inspect copies of certain medical records and information, notwithstanding laws governing the confidentiality of patient records; exempting health care practitioners, health care facilities, and agents and employees thereof from liability for the authorized release of patient records; amending s. 381.004, F.S.; revising requirements for the release of certain preliminary test results for human immunodeficiency virus; revising the definition of the term "medical personnel" to include additional personnel; amending s. 381.0059, F.S.; defining the term "person who provides services under a school health services plan" for purposes of background screening requirements for school health services personnel; amending s. 381.0101, F.S.; revising certification requirements for certain environmental health professionals; amending s. 381.731, F.S.; requiring that the department include certain strategies in the department's strategic plan rather than in the Healthy Communities, Healthy People Plan; amending s. 381.734, F.S.; revising the requirements of the Healthy Communities, Healthy People Program; transferring, renumbering, and amending s. 413.46, F.S.; revising legislative intent with respect to the brain and spinal cord injury program; creating s. 381.745, F.S.; providing definitions for purposes of the Charlie Mack Overstreet Brain or Spinal Cord Injuries Act; amending s. 381.75, F.S., relating to duties of the department under the brain and spinal cord injury program; conforming provisions to changes made by the act; creating

s. 381.755, F.S.; providing that the right to benefits under the program is not assignable; amending s. 381.76, F.S.; revising eligibility requirements for the brain and spinal cord injury program; creating s. 381.765, F.S.; authorizing the department to retain title to property and equipment and to dispose of surplus equipment; authorizing the department to adopt rules; creating s. 381.775, F.S.; continuing the confidentiality provided for records and information that pertains to applicants for and recipients of services under the brain and spinal cord injury program; specifying circumstances under which the department may release such records or information; amending s. 381.78, F.S., relating to the advisory council on brain and spinal cord injuries; authorizing reimbursement for per diem and travel expenses for members of the council; prohibiting a council member from voting on matters that provide a financial benefit or create a conflict of interest; providing for removal of members for cause; creating s. 381.785, F.S.; authorizing the department to recover third-party payments for funded services; providing for the enforcement of such right to recovery pursuant to a lien; requiring the department to adopt rules governing the recovery of payments; amending s. 381.79, F.S., relating to the Brain and Spinal Cord Injury Rehabilitation Trust Fund; redesignating the fund as the "Brain and Spinal Cord Injury Program Trust Fund"; providing additional purposes for which moneys in the trust fund may be used; authorizing the department to accept certain gifts; amending s. 385.103, F.S.; providing for the department to operate community intervention programs rather than comprehensive health improvement projects; revising definitions; revising duties of the department in operating such services; requiring the department to adopt rules governing the operation of community intervention programs; amending s. 385.207, F.S., relating to programs in epilepsy control; conforming a cross-reference; amending s. 402.181, F.S.; providing for certain damages and injuries caused by patients of institutions under the Department of Health and specified other state agencies to be reimbursed under the State Institutions Claims Program; amending s. 514.021, F.S.; requiring the department to review rules; designating Florida Alzheimer's Disease Day; providing planning for long-term community-based supports for specified brain and spinal cord injury individuals; providing purpose; providing for compliance with s. 381.775, F.S.; providing for a study and report; providing base standard for ranking for services; providing limitation on use of funding; providing the department with certain rulemaking authority; providing residency requirement; providing severability; providing intent; creating the Jessie Trice Cancer Prevention Program within the Department of Health; providing funding contingent upon an appropriation; creating the Florida Commission on Excellence in Health Care; providing legislative findings and intent; providing definitions; providing duties and responsibilities; providing for membership, organization, meetings, procedures, and staff; providing for reimbursement of travel and related expenses of certain members; providing certain evidentiary prohibitions; requiring a report to the Governor, the President of the Senate, and the

Speaker of the House of Representatives; providing for termination of the commission; providing an appropriation; creating s. 381.00325, F.S.; providing for a Hepatitis A awareness program; creating s. 154.247, F.S.; authorizing authorities to issue bonds to finance projects for health facilities or not-for-profit corporations under their common control outside the geographical limits of the local agency or outside the state; providing that certain specialty hospitals are not exempt from s. 408.036(1), F.S.; amending s. 400.0065, F.S.; providing duty of the State Long-Term Care Ombudsman to prepare and submit annual budget requests; creating s. 400.0066, F.S.; specifying additional duties of the Long-Term Care Ombudsman and other state agencies; limiting administrative charges; amending ss. 400.0067 and 400.0069, F.S.; revising provisions relating to appointment and terms of service of members of the state and local ombudsman councils; amending ss. 400.0077, 400.0081, and 400.0087, F.S.; providing authority of the Office of State Long-Term Care Ombudsman to adopt rules relating to disclosure of files maintained by the program, access to facilities and residents, and monitoring of local ombudsman councils by the Department of Elderly Affairs; deleting rulemaking authority of the department; amending ss. 20.41, 395.3025, 400.0063, 400.0071, 400.0073, 400.0075, 400.0079, 400.0083, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.19, 400.191, 400.23, 400.419, 400.428, 400.434, 400.435, 400.4415, 400.619, and 400.628, F.S.; clarifying and conforming references and cross-references; providing appropriations; providing for protection of the state's interest in property purchased or improved with state funds; amending s. 409.912, F.S., relating to cost-effective purchasing of health care under the Medicaid program; requiring the agency to implement a Medicaid prescribed-drug spending-control program; specifying program components; providing for implementation to the extent funds are appropriated; authorizing contracts; requiring an annual report; creating the Medicaid Pharmaceutical Therapeutics Committee; providing for membership; providing for the adoption of a voluntary preferred prescribed-drug list by the committee; providing an effective date.

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

Section 1. Paragraph (l) of subsection (1) of section 20.43, Florida Statutes, is amended and subsection (8) is added to that section to read:

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

(1) The purpose of the Department of Health is to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties. The department shall:

(l) Include in the department's strategic plan developed under s. 186.021 an assessment of ~~Biennially publish, and annually update, a state health plan that assesses~~ current health programs, systems, and costs; ~~makes~~

projections of future problems and opportunities; and recommended ~~recommends~~ changes that are needed in the health care system to improve the public health.

(8) The department may hold copyrights, trademarks, and service marks and enforce its rights with respect thereto, except such authority does not extend to any public records relating to the department's responsibilities for health care practitioners regulated under part II, chapter 455.

Section 2. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.—The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Family Services. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration between the Department of Health and the Department of Children and Family Services. The two departments shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The Secretary of Health and the Deputy Secretary ~~director~~ of Children's Medical Services, in consultation with the Secretary of Children and Family Services, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall utilize and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Family Services. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Family Services, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(2) The child abuse, abandonment, and neglect reports that must be referred by the Department of Children and Family Services to child protection teams of the Department of Health for medical evaluation and available support services as set forth in subsection (1) must include cases involving:

(a) Bruises, burns, or fractures in a child of any age.

(b) Sexual abuse of a child in which vaginal or anal penetration is alleged or in which other unlawful sexual conduct has been determined to have occurred.

(c) Venereal disease, or any other sexually transmitted disease, in a prepubescent child.

(d) Reported malnutrition of a child and failure of a child to thrive.

(e) Reported medical, physical, or emotional neglect of a child.

(f) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and

later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(g) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(h) Injuries to a child's head.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. All cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by a board-certified pediatrician or registered nurse practitioner under the supervision of such pediatrician for the purpose of determining whether a face-to-face medical evaluation by a child protection team is necessary. Such face-to-face medical evaluation is not necessary only if it is determined that the child was examined by a physician for the alleged abuse or neglect, and a consultation between the child protection team board-certified pediatrician or nurse practitioner and the examining physician concludes that a further medical evaluation is unnecessary.

(4) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Family Services, shall avoid duplicating the provision of those services.

Section 3. Subsection (15) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(15) DEPARTMENT OF HEALTH.—Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Health, the director of the Agency for Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by part II of chapter 455. Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children's Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Family Services for a hearing officer in these matters.

Section 4. Subsections (2) and (5) of section 154.011, Florida Statutes, are amended to read:

154.011 Primary care services.—

(2) The department shall monitor, measure, and evaluate ~~be responsible for monitoring, measuring, and evaluating~~ the quality of care, ~~cost-~~

~~effectiveness, services, and geographic accessibility~~ provided by each primary care program ~~and shall utilize the resulting data when renegotiating contracts with counties~~.

(5) The department shall adopt rules to govern the operation of primary care programs authorized by this section. Such rules shall include, but not be limited to, quality of care, case management, a definition of income used to determine eligibility or sliding fees, and Medicaid participation and shall be developed by the State Health Officer. Rules governing services to clients under 21 years of age shall be developed in conjunction with children's medical services and shall at a minimum include preventive services as set forth in s. 627.6579.

Section 5. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 215.5602, Florida Statutes, are amended to read:

215.5602 Florida Biomedical Research Program.—

(1) There is established within the Lawton Chiles Endowment Fund the Florida Biomedical Research Program to support research initiatives that address the health care problems of Floridians in the areas of cancer, cardiovascular disease, stroke, and pulmonary disease. The long-term goals of the program are to:

(a) Improve the health of Floridians by researching better prevention, diagnoses, and treatments for cancer, cardiovascular disease, stroke, and pulmonary disease.

(b) Expand the foundation of biomedical knowledge relating to the prevention, diagnosis, and treatment of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

(2) Funds appropriated from the Lawton Chiles Endowment Fund to the Department of Health for the purposes of this section shall be used exclusively for the award of grants and fellowships under the program established in this section; for research relating to the prevention, diagnosis, and treatment of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease; and for expenses incurred in the administration of this section.

Section 6. Subsection (3) of section 381.0011, Florida Statutes, is amended to read:

381.0011 Duties and powers of the Department of Health.—It is the duty of the Department of Health to:

(3) Include in the department's strategic plan developed under s. 186.021 a summary of ~~Develop a comprehensive public health plan that addresses~~ all aspects of the public health mission and ~~establishes~~ health status objectives to direct the use of public health resources with an emphasis on prevention.

Section 7. Paragraph (e) of subsection (1) and subsection (2) of section 381.003, Florida Statutes, is amended to read:

381.003 Communicable disease and acquired immune deficiency syndrome prevention and control.—

(1) The department shall conduct a communicable disease prevention and control program as part of fulfilling its public health mission. A communicable disease is any disease caused by transmission of a specific infectious agent, or its toxic products, from an infected person, an infected animal, or the environment to a susceptible host, either directly or indirectly. The communicable disease program must include, but need not be limited to:

(e) Programs for the prevention and control of vaccine-preventable diseases, including programs to immunize school children as required by s. 232.032 and the development of an automated, electronic, and centralized database or registry of immunizations. The department shall ensure that all children in this state are immunized against vaccine-preventable diseases. The immunization registry shall allow the department to enhance current immunization activities for the purpose of improving the immunization of all children in this state.

1. Except as provided in subparagraph 2., the department shall include all children born in this state in the immunization registry by using the birth records from the Office of Vital Statistics. The department shall add other children to the registry as immunization services are provided.

2. The parent or guardian of a child may refuse to have the child included in the immunization registry by signing a form obtained from the department, or from the health care practitioner or entity that provides the immunization, which indicates that the parent or guardian does not wish to have the child included in the immunization registry. The decision to not participate in the immunization registry must be noted in the registry.

3. The immunization registry shall allow for immunization records to be electronically transferred to entities that are required by law to have such records, including schools, licensed child care facilities, and any other entity that is required by law to obtain proof of a child's immunizations.

4. Any health care practitioner licensed under chapter 458, chapter 459, or chapter 464 in this state who complies with rules adopted by the department to access the immunization registry may, through the immunization registry, directly access immunization records and update a child's immunization history or exchange immunization information with another authorized practitioner, entity, or agency involved in a child's care. The information included in the immunization registry must include the child's name, date of birth, address, and any other unique identifier necessary to correctly identify the child; the immunization record, including the date, type of administered vaccine, and vaccine lot number; and the presence or absence of any adverse reaction or contraindication related to the immunization. Information received by the department for the immunization registry retains its status as confidential medical information and the department must maintain the confidentiality of that information as otherwise required by law. A health care practitioner or other agency that obtains information from the immunization registry must maintain the confidentiality of any

medical records in accordance with s. 455.667 or as otherwise required by law.

(2) The department may adopt, repeal, and amend rules related to the prevention and control of communicable diseases and the administration of the immunization registry. Such rules may include~~, including~~ procedures for investigating disease, timeframes for reporting disease, requirements for followup reports of known or suspected exposure to disease, and procedures for providing access to confidential information necessary for disease investigations. For purposes of the immunization registry, the rules may include procedures for a health care practitioner to obtain authorization to use the immunization registry, methods for a parent or guardian to elect not to participate in the immunization registry, and procedures for a health care practitioner licensed under chapter 458, chapter 459, or chapter 464 to access and share electronic immunization records with other entities allowed by law to have access to the records.

Section 8. Section 381.0031, Florida Statutes, is amended to read:

381.0031 Report of diseases of public health significance to department.—

(1) Any practitioner licensed in this state to practice medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; any hospital licensed under part I of chapter 395; or any laboratory licensed under chapter 483 that diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health.

(2) Periodically the department shall issue a list of infectious or noninfectious diseases determined by it to be a threat to public health and therefore of significance to public health and shall furnish a copy of the list to the practitioners listed in subsection (1).

(3) Reports required by this section must be in accordance with methods specified by rule of the department.

(4) Information submitted in reports required by this section is confidential, exempt from the provisions of s. 119.07(1), and is to be made public only when necessary to public health. A report so submitted is not a violation of the confidential relationship between practitioner and patient.

(5) The department may obtain and inspect copies of medical records, records of laboratory tests, and other medical-related information for reported cases of diseases of public health significance described in subsection (2). The department shall examine the records of a person who has a disease of public health significance only for purposes of preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance, notwithstanding any other law to the contrary. Health care practitioners, licensed health care facilities, and laboratories shall allow the department to inspect and obtain copies of such medical records and medical-related information, notwithstanding any other law to the contrary. Release of medical records and medical-related

information to the department by a health care practitioner, licensed health care facility, or laboratory, or by an authorized employee or agent thereof, does not constitute a violation of the confidentiality of patient records. A health care practitioner, health care facility, or laboratory, or any employee or agent thereof, may not be held liable in any manner for damages and is not subject to criminal penalties for providing patient records to the department as authorized by this section.

(6)~~(5)~~ The department may adopt rules related to reporting diseases of significance to public health, which must specify the information to be included in the report, who is required to report, the method and time period for reporting, requirements for enforcement, and required followup activities by the department which are necessary to protect public health.

This section does not affect s. 384.25.

Section 9. Paragraphs (d) and (h) of subsection (3) of section 381.004, Florida Statutes, are amended to read:

381.004 Testing for human immunodeficiency virus.—

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(d) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted except in the following situations:

1. Preliminary test results may be released to licensed physicians or the medical or nonmedical personnel subject to the significant exposure for purposes of subparagraphs (h)10., 11., and 12.

2. Preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of, or recommendation to, the person tested and, in the case of an intrapartum or postpartum woman, when care, treatment, or recommendations regarding her newborn, cannot await the results of confirmatory testing. Positive preliminary HIV test results shall not be characterized to the patient as a diagnosis of HIV infection. Justification for the use of preliminary test results must be documented in the medical record by the health care provider who ordered the test. This subparagraph does not authorize the release of preliminary test results for the purpose of routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient. Corroborating or confirmatory testing must be conducted as followup to a positive preliminary test. Results shall be communicated to the patient according to statute regardless of the outcome. Except as provided in this section, test results are confidential and exempt from the provisions of s. 119.07(1).

(h) Notwithstanding the provisions of paragraph (a), informed consent is not required:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule including the following situations:

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

b. Testing for HIV by a medical examiner in accordance with s. 406.11.

2. Those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies when the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, obtaining informed consent would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without informed consent.

5. When HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to the provisions of s. 775.0877, s. 951.27, or s. 960.003; however, the results of any HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003.

7. When an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0032, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. When human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. 732.9185 or enucleation of the eyes as authorized by s. 732.919.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of

practice and where a blood sample is available that was taken from that individual voluntarily by medical personnel for other purposes. The term "medical personnel" includes a licensed or certified health care professional; an employee of a health care professional or, health care facility; employees of a laboratory licensed under chapter 483; personnel of a, or blood bank or plasma center; a medical student or other student who is receiving training as a health care professional at a health care facility; and a paramedic or emergency medical technician certified by the department to perform life-support procedures under as defined in s. 401.23.

a. Prior to performance of an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. The individual's refusal to consent and all information concerning the performance of an HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to obtain consent shall be made and all attempts must be documented. If the individual cannot be found, an HIV test may be conducted on the available blood sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel.

c. Costs of any HIV test of a blood sample performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel must either be tested for HIV pursuant to this section or provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample is not available, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a

significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test prior to the testing. The individual's refusal to consent, and all information concerning the performance of an HIV test and its result, shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel or nonmedical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

c. Costs of any HIV test performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel or nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample was not obtained during treatment for the medical emergency, the medical personnel, the employer of the medical personnel

acting on behalf of the employee, or the nonmedical personnel may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner or attending physician upon an individual who expired or could not be resuscitated while receiving emergency medical assistance or care and who was the source of a significant exposure to medical or nonmedical personnel providing such assistance or care.

a. HIV testing may be conducted only after a licensed physician documents in the medical record of the medical personnel or nonmedical personnel that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

b. Costs of any HIV test performed under this subparagraph may not be charged to the deceased or to the family of the deceased person.

c. For the provisions of this subparagraph to be applicable, the medical personnel or nonmedical personnel must be tested for HIV under this section or must provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall comply with paragraph (e).

13. For the performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant as necessary to provide appropriate care and treatment of the infant when, after a reasonable attempt, a parent cannot be contacted to provide consent. The medical records of the infant shall reflect the reason consent of the parent was not initially obtained. Test results shall be provided to the parent when the parent is located.

14. For the performance of HIV testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive.

15. For the performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

Section 10. Section 381.0059, Florida Statutes, is amended to read:

381.0059 Background screening requirements for school health services personnel.—

(1)(a) Any person who provides services under a school health services plan pursuant to s. 381.0056 must complete level 2 screening as provided

in chapter 435. A person may satisfy the requirements of this subsection by submitting proof of compliance with the requirements of level 2 screening under s. 435.04, conducted within 12 months before the date that person initially provides services under a school health services plan pursuant to s. 381.0056. Any person who provides services under a school health services plan pursuant to s. 381.0056 shall be on probationary status pending the results of the level 2 screening.

(b) In order to conduct level 2 screening, any person who provides services under a school health services plan pursuant to s. 381.0056 must furnish to the Department of Health a full set of fingerprints to enable the department to conduct a criminal background investigation. Each person who provides services under a school health services plan pursuant to s. 381.0056 must file a complete set of fingerprints taken by an authorized law enforcement officer and must provide sufficient information for a statewide criminal records correspondence check through the Florida Department of Law Enforcement. The Department of Health shall submit the fingerprints 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.

(c) The person subject to the required background screening or his or her employer must pay the fees required to obtain the background screening. Payment for the screening and the abuse registry check must be submitted to the Department of Health. The Florida Department of Law Enforcement shall charge the Department of Health for a level 2 screening at a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The Department of Health shall establish a schedule of fees to cover the costs of the level 2 screening and the abuse registry check. The applicant or his or her employer who pays for the required screening may be reimbursed by the Department of Health from funds designated for this purpose.

(2)(a) When the Department of Health has reasonable cause to believe that grounds exist for the disqualification of any person providing services under a school health services plan pursuant to s. 381.0056, as a result of background screening, it shall notify the person in writing, stating the specific record that indicates noncompliance with the level 2 screening standards. The Department of Health must disqualify any person from providing services under a school health services plan pursuant to s. 381.0056 if the department finds that the person is not in compliance with the level 2 screening standards. A person who provides services under a school health plan pursuant to s. 381.0056 on a probationary status and who is disqualified because of the results of his or her background screening may contest that disqualification.

(b) As provided in s. 435.07, the Department of Health may grant an exemption from disqualification to a person providing services under a school health services plan pursuant to s. 381.0056 who has not received a professional license or certification from the Department of Health.

(c) As provided in s. 435.07, the Department of Health may grant an exemption from disqualification to a person providing services under a

school health services plan pursuant to s. 381.0056 who has received a professional license or certification from the Department of Health.

(3) Any person who is required to undergo the background screening to provide services under a school health plan pursuant to s. 381.0056 who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints, shall be disqualified for employment or volunteering in such position or, if employed, shall be dismissed.

(4) Under penalty of perjury, each person who provides services under a school health plan pursuant to s. 381.0056 must attest to meeting the level 2 screening requirements for participation under the plan and agree to inform the Department of Health immediately if convicted of any disqualifying offense while providing services under a school health services plan pursuant to s. 381.0056.

(5) As used in this section, the term "person who provides services under a school health services plan" does not include an unpaid volunteer who lectures students in group settings on health education topics.

Section 11. Paragraphs (a) and (d) of subsection (5) of section 381.0101, Florida Statutes, are amended to read:

381.0101 Environmental health professionals.—

(5) STANDARDS FOR CERTIFICATION.—The department shall adopt rules that establish minimum standards of education, training, or experience for those persons subject to this section. The rules shall also address the process for application, examination, issuance, expiration, and renewal of certification and ethical standards of practice for the profession.

(a) Persons employed as environmental health professionals shall exhibit a knowledge of rules and principles of environmental and public health law in Florida through examination. A person may not conduct environmental health evaluations in a primary program area unless he or she is currently certified in that program area or works under the direct supervision of a certified environmental health professional.

1. All persons who begin employment in a primary environmental health program on or after September 21, 1994, must be certified in that program within 6 months after employment.

2. Persons employed in the ~~a~~ primary environmental health program of a food protection program or an onsite sewage treatment and disposal system prior to September 21, 1994, shall be considered certified while employed in that position and shall be required to adhere to any professional standards established by the department pursuant to paragraph (b), complete any continuing education requirements imposed under paragraph (d), and pay the certificate renewal fee imposed under subsection (7).

3. Persons employed in the ~~a~~ primary environmental health program of a food protection program or an onsite sewage treatment and disposal system prior to September 21, 1994, who change positions or program areas and

transfer into another primary environmental health program area on or after September 21, 1994, must be certified in that program within 6 months after such transfer, except that they will not be required to possess the college degree required under paragraph (e).

4. Registered sanitarians shall be considered certified and shall be required to adhere to any professional standards established by the department pursuant to paragraph (b).

(d) Persons who are certified shall renew their certification biennially by completing not less than 24 contact hours of continuing education for each program area in which they maintain certification, subject to a maximum of 48 hours for multiprogram certification.

Section 12. Section 381.731, Florida Statutes, is amended to read:

381.731 Strategic planning ~~Healthy Communities, Healthy People Plan~~.—

~~(1)~~ The Department of Health shall include population-based health-promotion strategies in the department's strategic plan developed under s. 186.021 ~~develop a biennial Healthy Communities, Healthy People Plan that shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each even-numbered year~~.

~~(2)~~ The strategic plan must include data on the health status of the state's population, health status objectives and outcome measures, and public health strategies, including health promotion strategies. The strategic plan must also provide an overall conceptual framework for the state's health promotion programs that considers available information on mortality, morbidity, disability, and behavioral risk factors associated with chronic diseases and conditions~~; proposals for public and private health insurance reforms needed to fully implement the state's health promotion initiative; the best health promotion practices of the county health departments and other states; and proposed educational reforms needed to promote healthy behaviors among the state's school-age children~~.

Section 13. Section 381.734, Florida Statutes, is amended to read:

381.734 Healthy Communities, Healthy People Program.—

(1) The department shall develop and implement the Healthy Communities, Healthy People Program, a comprehensive and community-based health promotion and wellness program. The program shall be designed to reduce major behavioral risk factors associated with chronic diseases, including those chronic diseases identified in chapter 385, ~~and injuries and accidents,~~ by enhancing the knowledge, skills, motivation, and opportunities for individuals, organizations, and communities to develop and maintain healthy lifestyles.

(2) The department shall consolidate and use existing resources, programs, and program data to develop this program, to avoid duplication of

efforts or services. Such resources, programs, and program data shall include the community intervention programs operated~~, but not be limited to, s. 381.103, the comprehensive health improvement project~~ under s. 385.103~~, and the comprehensive public health plan, public information, and statewide injury control plan under s. 381.0011(3), (8), and (12)~~.

(3) The program shall include:

(a) ~~Biennial~~ Statewide assessments of specific, causal, and behavioral risk factors that affect the health of residents of the state.

(b) The development of community-based health promotion programs, incorporating health promotion and preventive care practices supported in scientific and medical literature.

(c) The development and implementation of statewide age-specific, disease-specific, and community-specific health promotion and preventive care strategies using primary, secondary, and tertiary prevention interventions.

(d) The ~~development and implementation of models for testing statewide health~~ promotion of community-based health-promotion model programs that meet specific criteria and address major risk factors in the state and motivate individuals to permanently adopt healthy behaviors, enhance self-esteem, and increase social and personal responsibilities.

(e) The enhancement of the department's ~~State Health Office's~~ special initiatives to develop the mental, emotional, and social competencies of children and adolescents, using innovative school-based and neighborhood-based approaches to build self-esteem and prevent later problems such as drug abuse, poor school performance, criminal behavior, and other behavioral problems.

(f) The development and implementation of a statewide health education program to educate the public and communities about health risks and assist them in modifying unhealthy behaviors.

(g) The establishment of a comprehensive program to inform the public, health care professionals, and communities about the prevalence of chronic diseases in the state; known and potential risks, including social and behavioral risks; and behavior changes that would reduce risks.

(h) The development and implementation of a program for enhancing self-help organizations and volunteer programs that enlist the support of volunteers in health promotion activities, particularly persons who serve as role models because of their public visibility or because of their recovery from or skill in coping with disease.

(i) The development of policies that encourage the use of alternative community delivery sites for health promotion and preventive care programs and promote the use of neighborhood delivery sites that are close to work, home, and school.

(j) An emphasis on the importance of a physically active lifestyle to build self-esteem, reduce morbidity and mortality associated with chronic disease, and reduce obesity.

Section 14. Section 413.46, Florida Statutes, is transferred, renumbered as section 381.7395, Florida Statutes, and amended to read:

381.7395 ~~413.46~~ Legislative intent.—It is the intent of the Legislature to ensure the referral of individuals ~~persons~~ who have moderate-to-severe brain or spinal cord injuries to the brain and spinal cord injury program, a coordinated rehabilitation program ~~developed and~~ administered by the department ~~division~~. The program shall provide eligible persons, as defined in s. 381.76 ~~s. 413.507~~, the opportunity to obtain the necessary rehabilitative services enabling them to be referred to a vocational rehabilitation program or to return to an appropriate level of functioning in their community. Further, it is intended that permanent disability be avoided, whenever possible, through prevention, early identification, ~~skilled~~ emergency medical services and transport ~~evacuation procedures~~, and proper medical and rehabilitative treatment.

Section 15. Section 381.745, Florida Statutes, is created to read:

381.745 Definitions.—As used in ss. 381.739-381.79, the term:

(1) "Activity of daily living" means an activity required on a frequent basis which permits an individual to secure or maintain independence. Such activities include, but are not limited to, personal home care, transportation, personal-assistance services, housekeeping, shopping, attending school, communication, and employment.

(2) "Brain or spinal cord injury" means:

(a) A lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions:

1. Motor deficit.

2. Sensory deficit.

3. Bowel and bladder dysfunction.

(b) An insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.

(3) "Emergency medical evacuation system" means a department-approved transportation system that provides timely and skilled emergency care and movement of individuals believed to have sustained a brain or spinal cord injury.

(4) "Personal-assistance services" means a range of services, provided by one or more individuals, which are designed to assist an individual who has a disability to perform activities of daily living.

(5) "Funded services" means services paid for through the brain and spinal cord injury program.

(6) "Designated facility" means a facility approved by the brain and spinal cord injury program which meets the criteria and standards of care of the brain and spinal cord injury program for individuals who have sustained a brain or spinal cord injury.

(7) "Third-party coverage" means any claim for, right to receive payment for, or any coverage for the payment of any services under the brain and spinal cord injury program.

(8) "Third-party payment" means any and all payments received or due as a result of any third-party obligation created by gift, coverage or other contract, settlement or judicial decision, or action of law.

(9) "Transitional living facility" means a state-approved facility, as defined and licensed under chapter 400, or a facility approved by the brain and spinal cord injury program in accordance with this chapter.

(10) "Trauma center" means a department-approved acute care facility that provides diagnosis and treatment of individuals who have sustained a brain or spinal cord injury.

Section 16. Section 381.75, Florida Statutes, is amended to read:

381.75 Duties and responsibilities of the department, of transitional living facilities, and of residents.—Consistent with the mandate of s. 381.7395 ~~s. 413.46~~, the department shall develop and administer a multilevel treatment program for individuals ~~persons~~ who sustain ~~have~~ brain or spinal cord injuries and who are referred to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual ~~a person~~ who has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The department shall refer individuals ~~persons~~ who have brain or spinal cord injuries to other state agencies to assure that rehabilitative services, if desired, are obtained by that individual ~~person~~.

(3) The department, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals ~~persons~~ who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals ~~persons~~ who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient

rehabilitation centers, needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide individuals the opportunity to adjust to their disabilities and to develop physical and functional skills in a supported living environment.

(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals ~~persons~~ who have brain or spinal cord injuries.

(b) The goal of a transitional living program for individuals ~~persons~~ who have brain or spinal cord injuries is to assist each individual ~~person~~ who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing participants to return to community living.

(c) A transitional living facility for an individual ~~a person~~ who has a brain or spinal cord injury shall provide to such individual ~~person~~, in a residential setting, a goal-oriented treatment program designed to improve the individual's ~~person's~~ physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals ~~persons~~, health education, and recreation.

(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.

(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.

Section 17. Section 381.755, Florida Statutes, is created to read:

381.755 Benefits not assignable.—The right of an eligible individual to any services provided by the brain and spinal cord injury program is not

transferable or assignable, and any benefits, including money, goods, or chattels, received as services under the brain and spinal cord injury program are exempt from all state, county, and municipal taxes and from sale under the process of any court, except for obligations contracted for the purchase of such property.

Section 18. Section 381.76, Florida Statutes, is amended to read:

381.76 Eligibility for the brain and spinal cord injury program.—

(1) An individual shall be accepted as eligible for the brain and spinal cord injury program following certification by the department that the individual:

(a) Has been referred to the central registry pursuant to s. 381.74; ~~s. 413.48.~~

(b) Is a legal resident of this state at the time of application for services;~~.~~

(c) Has sustained a brain or spinal cord ~~suffered a traumatic~~ injury; ~~as defined in s. 413.20.~~

(d) Is medically stable; and ~~as defined by rules of the department.~~

(e) Is reasonably expected to achieve reintegration into the community through ~~rehabilitative~~ services provided by the brain and spinal cord injury program.

(2) If ~~In the event~~ the department is unable to provide services to all eligible individuals, the department may establish an order of selection.

Section 19. Section 381.765, Florida Statutes, is created to read:

381.765 Retention of title to and disposal of equipment.—

(1) The department may retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for services provided under the brain and spinal cord injury program or for personnel employed in operating the brain and spinal cord injury program, and may repossess or transfer such property, tools, instruments, supplies, equipment, or other items of value.

(2) The department may offer for sale any surplus items acquired in operating the brain and spinal cord injury program when they are no longer necessary or exchange them for necessary items that may be used to greater advantage. When any such surplus equipment is sold or exchanged, a receipt for the equipment shall be taken from the purchaser showing the consideration given for such equipment and forwarded to the Treasurer, and any funds received by the brain and spinal cord injury program pursuant to any such transaction shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and shall be available for expenditure for any purpose consistent with this part.

(3) The department may adopt rules relating to records and recordkeeping for department-owned property referenced in subsections (1) and (2).

Section 20. Section 381.775, Florida Statutes, is created to read:

381.775 Applicant and recipient records; confidential and privileged.—

(1) All oral and written records, information, letters, and reports received, made, or maintained by the department relative to any applicant for or recipient of services under the brain and spinal cord injury program are privileged, confidential, and exempt from s. 119.07(1). Any person who discloses or releases such records, information, or communications in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such records may not be released, except that:

(a) Records may be released to the applicant or recipient, or his or her representative, upon receipt of a written waiver from the applicant or recipient. Medical, psychological, or other information that the department believes may be harmful to an applicant or recipient may not be released directly to him or her, but must be provided through a licensed health care professional designated by the applicant or recipient.

(b) Records that do not identify applicants or recipients may be released for the purpose of research, when the research is approved by the department.

(c) Records used in administering the brain and spinal cord injury program may be released as required to administer the program or as required by an agency or political subdivision of the state in the performance of its duties. Any agency or political subdivision to which records are released under this paragraph may not disclose the records to third parties.

(d) Records may be released upon the order of an administrative law judge, a hearing officer, a judge of compensation claims, an agency head exercising quasi-judicial authority, or a judge of a court of competent jurisdiction following a finding in an in camera proceeding that the records are relevant to the inquiry before the court and should be released. The in camera proceeding and all records relating thereto are confidential and exempt from s. 119.07(1).

(e) Whenever an applicant for or recipient of services under the brain and spinal cord injury program has declared any intention to harm other persons or property, such declaration may be disclosed.

(f) The department may release personal information about an applicant for or recipient of services under the brain and spinal cord injury program in order to protect him or her or others when the applicant or recipient poses a threat to his or her own safety or to the safety of others and shall, upon official request, release such information to law enforcement agencies investigating the commission of a crime.

(2) Records that come into the possession of the department relative to any applicant for or receipt of services under the brain and spinal cord injury program and that are confidential by other provisions of law are confidential and exempt from s. 119.07(1), and may not be released by the department, except as provided in this section.

Section 21. Section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(1) There is created within the department a 16-member advisory council on brain and spinal cord injuries. The council shall be composed of a minimum of four individuals ~~persons~~ who have brain injuries or are family members of individuals ~~persons~~ who have brain injuries, a minimum of four individuals ~~persons~~ who have spinal cord injuries or are family members of individuals ~~persons~~ who have spinal cord injuries, and a minimum of two individuals ~~persons~~ who represent the special needs of children who have brain or spinal cord injuries. The balance of the council members shall be physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups that have expertise in areas related to the rehabilitation of individuals ~~persons~~ who have brain or spinal cord injuries.

(2) Members of the council shall be appointed to serve by the Secretary of Health. All members' terms shall be for 4 years. An individual may not serve more than two terms.

~~(a) Eight members of the first appointed council shall serve an initial term of 2 years. This group shall include two persons who have brain injuries or are family members of persons who have brain injuries, two persons who have spinal cord injuries or are family members of persons who have spinal cord injuries, and four other persons from the previous council.~~

~~(b) The remaining members of the first appointed council shall serve an initial term of 4 years. Thereafter all members' terms shall be for 4 years.~~

~~(c)~~ Any council member who is unwilling or unable to properly fulfill the duties of the office shall be succeeded by an individual ~~a person~~ chosen by the secretary to serve out the unexpired balance of the replaced council member's term. If the unexpired balance of the replaced council member's term is less than 18 months, then, notwithstanding the provisions of this subsection, the succeeding council member may be reappointed by the secretary twice.

(3) The council shall meet at least two times annually.

(4) The council shall:

(a) Provide advice and expertise to the department ~~division~~ in the preparation, implementation, and periodic review of the brain and spinal cord injury program ~~as referenced in s. 413.49~~.

(b) Annually appoint a five-member committee composed of one individual ~~person~~ who has a brain injury or has a family member with a brain injury, one individual ~~person~~ who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the

rehabilitation of individuals ~~persons~~ who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.

1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(7) to designated representatives of the agency.

2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility.

3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.

4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.

5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.

(5) Members of the advisory council are entitled to reimbursement for per diem and travel expenses for required attendance at council meetings in accordance with s. 112.061. Reasonable expenses for personal-assistance services and interpreters needed by members during required attendance at council meetings shall be reimbursed. A member may not receive any compensation for performing duties specified in, or arising out of, her or his duties as a council member under this part, except as otherwise specified in this part.

(6) A member of the advisory council may not cast a vote on any matter that would provide direct financial benefit to the member or create a conflict of interest under state law.

(7) A member of the advisory council may be removed from office by the Secretary of Health for malfeasance, misfeasance, neglect of duty, incompetence, or permanent inability to perform official duties or for pleading nolo contendere to, or being found guilty of, a crime. Malfeasance includes, but is not limited to, a violation of any specific prohibition within this part.

Section 22. Section 381.785, Florida Statutes, is created to read:

381.785 Recovery of third-party payments for funded services.—

(1) Third-party coverage for funded services constitutes primary coverage.

(2) An applicant for or recipient of services funded under the brain and spinal cord injury program must inform the brain and spinal cord injury program of any rights she or he has to third-party payments for such services, and the brain and spinal cord injury program shall be subrogated to her or his rights to such third-party payments. The brain and spinal cord injury program may recover directly from:

(a) Any third party that is liable to make a benefit payment to the provider of the recipient's funded services or to the recipient under the terms of any contract, settlement, or award;

(b) The recipient, if she or he has received a third-party payment for funded services provided to her or him; or

(c) The provider of the recipient's funded services, if third-party payment for such services has been recovered by the provider.

(3) An applicant for or a recipient of funded services is deemed to have assigned to the brain and spinal cord injury program her or his rights to any payments for such services from a third party and to have authorized the brain and spinal cord injury program to release information with respect to such services for the sole purpose of obtaining reimbursement.

(4) The brain and spinal cord injury program may, in order to enforce its rights under this section, institute, intervene in, or join any legal proceeding against a third party against whom recovery rights arise. Action taken by the brain and spinal cord injury program does not preclude the recipient's recovery for that portion of her or his damages not subrogated to the brain and spinal cord injury program, and action taken by the recipient does not prejudice the rights of the brain and spinal cord injury program.

(5) When the brain and spinal cord injury program provides, pays for, or becomes liable for funded services, it has a lien for the amount of such services upon all causes of action that accrue to the recipient or to her or his legal representatives as a result of sickness, injury, disease, disability, or death due to the liability of a third party which necessitated funded services. To perfect such lien, a notice of lien must be filed with the clerk of the circuit court in the recipient's county of residence. The notice of lien must contain the name and address of the person to whom services were furnished and the name, address, and telephone number of a person at the brain and spinal cord injury program from whom information regarding the lien can be obtained. Failure of the brain and spinal cord injury program to file a notice of lien does not affect the program's other rights provided in this section. Any notice of lien filed as provided under this subsection is valid for 5 years after filing, and may be extended for an additional 5-year period by filing a new notice of lien at any time prior to the expiration of the original notice of lien.

(6) In recovering any payments in accordance with this section, the brain and spinal cord injury program may make appropriate settlements.

(7) Notwithstanding any other law to the contrary, payments made for funded services are neither collateral payments nor collateral sources within

the meaning of chapter 86-160, Laws of Florida, or chapter 88-1, Laws of Florida.

(8) Notwithstanding any other law to the contrary, the brain and spinal cord injury program retains all rights and remedies granted under this section as against moneys paid under chapter 440.

(9) The department shall adopt rules to administer this section.

Section 23. Section 381.79, Florida Statutes, is amended to read:

381.79 Brain and Spinal Cord Injury Program ~~Rehabilitation~~ Trust Fund.—

(1) There is created in the State Treasury the Brain and Spinal Cord Injury Program ~~Rehabilitation~~ Trust Fund. Moneys in the fund shall be appropriated to the department for the purpose of providing the cost of care for brain or spinal cord injuries as a payor of last resort to residents of this state, for multilevel programs of care established pursuant to s. 381.75 ~~s. 413.49~~.

(a) Authorization of expenditures for brain or spinal cord injury care shall be made only by the department.

(b) Authorized expenditures include acute care, rehabilitation, transitional living, equipment~~,~~ and supplies necessary for activities of daily living, public information, prevention, education, and research. In addition, the department may provide matching funds for public or private assistance provided under the brain and spinal cord injury program and may provide funds for any approved expansion of services for treating individuals who have sustained a brain or spinal cord injury.

(2) The department shall issue a report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year, summarizing the activities supported by the trust fund.

(3) Annually, 5 percent of the revenues deposited monthly in the fund pursuant to s. 318.21(2)(d) shall be appropriated to the University of Florida and 5 percent to the University of Miami for spinal cord injury and brain injury research. The amount to be distributed to the universities shall be calculated based on the deposits into the fund for each quarter in the fiscal year, but may not exceed $500,000 per university per year. Funds distributed under this subsection shall be made in quarterly payments at the end of each quarter during the fiscal year.

(4) The Board of Regents shall establish a program administration process which shall include: an annual prospective program plan with goals, research design, proposed outcomes, a proposed budget, an annual report of research activities and findings, and an annual end-of-year financial statement. Prospective program plans shall be submitted to the Board of Regents, and funds shall be released upon acceptance of the proposed program plans. The annual report of research activities and findings shall be submitted to the Board of Regents, with the executive summaries submitted to the Presi-

dent of the Senate, the Speaker of the House of Representatives, and the Secretary ~~of the Department~~ of Health.

(5) Moneys received under s. 381.785 shall be deposited into the trust fund and used for the purposes specified in subsection (1).

(6) The department may accept, deposit into the trust fund, and use for carrying out the purposes of this part gifts made unconditionally by will or otherwise. Any gift made under conditions that, in the judgment of the department, are proper and consistent with this section, the laws of the United States, and the laws of this state may be accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

Section 24. Section 385.103, Florida Statutes, is amended to read:

385.103 Community intervention programs ~~Chronic disease control program.—~~

(1) DEFINITIONS.—As used in this section, the term ~~act~~:

(a) "Chronic disease prevention and control program" means a program including a combination of ~~at least~~ the following elements:

1. Health screening;

2. Risk factor detection;

3. Appropriate intervention to enable and encourage changes in behaviors that create health risks ~~risk factor reversal~~; and

4. Counseling in nutrition, physical activity, the effects of tobacco use, hypertension, blood pressure control, and diabetes control and the provision of other clinical prevention services ~~counseling~~.

(b) "Community health education program" means a program involving the planned and coordinated use of the educational resources available in a community in an effort to:

1. Motivate and assist citizens to adopt and maintain healthful practices and lifestyles;

2. Make available learning opportunities which will increase the ability of people to make informed decisions affecting their personal, family, and community well-being and which are designed to facilitate voluntary adoption of behavior which will improve or maintain health;

3. Reduce, through coordination among appropriate agencies, duplication of health education efforts; and

4. Facilitate collaboration among appropriate agencies for efficient use of scarce resources.

(c) "Community intervention program" ~~"Comprehensive health improvement project"~~ means a program combining the required elements of ~~both~~ a

chronic disease prevention and control program and a community health education program into a unified program over which a single administrative entity has authority and responsibility.

(d) "Department" means the Department of Health.

~~(e) "District" means a service district of the department.~~

(e)~~(f)~~ "Risk factor" means a factor identified during the course of an epidemiological study of a disease, which factor appears to be statistically associated with a high incidence of that disease.

(2) OPERATION OF COMMUNITY INTERVENTION PROGRAMS ~~COMPREHENSIVE HEALTH IMPROVEMENT PROJECTS~~.—

(a) The department shall assist the county health departments in developing and operating community intervention programs ~~comprehensive health improvement projects~~ throughout the state. At a minimum, the community intervention programs ~~comprehensive health improvement projects~~ shall address one to three of the following ~~the~~ chronic diseases: ~~of~~ cancer, diabetes, heart disease, stroke, hypertension, renal disease, and chronic obstructive lung disease.

(b) Existing community resources, when available, shall be used to support the programs. The department shall seek funding for the programs from federal and state financial assistance programs which presently exist or which may be hereafter created. Additional services, as appropriate, may be incorporated into a program to the extent that resources are available. The department may accept gifts and grants in order to carry out a program.

(c) Volunteers shall be used to the maximum extent possible in carrying out the programs. The department shall contract for the necessary insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under a program.

(d) The department may contract for the provision of all or any portion of the services required by a program, and shall so contract whenever the services so provided are more cost-efficient than those provided by the department.

(e) If the department determines that it is necessary for clients to help pay for services provided by a program, the department may require clients to make contribution therefor in either money or personal services. The amount of money or value of the personal services shall be fixed according to a fee schedule established by the department or by the entity developing the program. In establishing the fee schedule, the department or the entity developing the program shall take into account the expenses and resources of a client and his or her overall ability to pay for the services.

(f) The department shall adopt rules governing the operation of the community intervention programs ~~health improvement projects~~. ~~These rules shall include guidelines for intake and enrollment of clients into the projects.~~

Section 25. Subsection (3) of section 385.207, Florida Statutes, is amended to read:

385.207 Care and assistance of persons with epilepsy; establishment of programs in epilepsy control.—

(3) Revenue for statewide implementation of programs for epilepsy prevention and education pursuant to this section shall be derived pursuant to the provisions of s. 318.21(6) ~~s. 318.18(12)~~ and shall be deposited in the Epilepsy Services Trust Fund, which is hereby established to be administered by the Department of Health. All funds deposited into the trust fund shall be invested pursuant to the provisions of s. 18.125. Interest income accruing to such invested funds shall increase the total funds available under this subsection.

Section 26. Section 402.181, Florida Statutes, is amended to read:

402.181 State Institutions Claims Program.—

(1) There is created a State Institutions Claims Program, for the purpose of making restitution for property damages and direct medical expenses for injuries caused by shelter children or foster children, or escapees, ~~or~~ inmates, or patients of state institutions under the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, or the Department of Corrections.

(2) Claims for restitution may be filed with the Department of Legal Affairs at its office in accordance with regulations prescribed by the Department of Legal Affairs. The Department of Legal Affairs shall have full power and authority to hear, investigate, and determine all questions in respect to such claims and is authorized, within the limits of current appropriations, to pay individual claims up to $1,000 or, with respect to children in foster care and their families, individual claims up to $1,500. Claims in excess of these amounts shall continue to require legislative approval.

(3)(a) The Department of Legal Affairs shall make or cause to be made such investigations as it considers necessary in respect to such claims. Hearings shall be held in accordance with chapter 120.

(b) The Department of Legal Affairs shall work with the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to streamline the process of investigations, hearings, and determinations with respect to claims under this section, to ensure that eligible claimants receive restitution within a reasonable time.

Section 27. Section 514.021, Florida Statutes, is amended to read:

514.021 Department authorization.—The department is authorized to adopt and enforce rules to protect the health, safety, or welfare of persons using public swimming pools and bathing places. The department shall review and revise such rules as necessary, but not less than biennially ~~biannually~~. Sanitation and safety standards shall include, but not be limited

to, matters relating to structure; appurtenances; operation; source of water supply; bacteriological, chemical, and physical quality of water in the pool or bathing area; method of water purification, treatment, and disinfection; lifesaving apparatus; measures to ensure safety of bathers; and measures to ensure the personal cleanliness of bathers.

Section 28. February 6th of each year is designated Florida Alzheimer's Disease Day.

Section 29. Long-term community-based supports.—The department shall, contingent upon specific appropriations for these purposes:

(1) Study the long-term needs for community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries. The purpose of this study is to prevent inappropriate residential and institutional placement of these individuals, and promote placement in the most cost effective and least restrictive environment. Any placement recommendations for these individuals shall ensure full utilization of and collaboration with other state agencies, programs, and community partners. This study shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31, 2000.

(2) Based upon the results of this study, establish a plan for the implementation of a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries who may be subject to inappropriate residential and institutional placement as a direct result of such injuries.

(a) The program shall be payor of last resort for program services and expenditures for such services shall be considered funded services for purposes of section 381.785, Florida Statutes; however, notwithstanding section 381.79(5), Florida Statutes, proceeds resulting from this subsection shall be used solely for this program.

(b) The department shall create, by rule, procedures to ensure, that in the event the program is unable to directly or indirectly provide such services to all eligible individuals due to lack of funds, those individuals most at risk to suffer the greatest harm from an imminent inappropriate residential or institutional placement are served first.

(c) Every applicant or recipient of the long-term community-based supports and services program shall have been a resident of the state for 1 year immediately preceding application and be a resident of the state at the time of application.

(d) The department shall adopt rules pursuant to sections 120.536(1) and 120.54, Florida Statutes, to implement the provision of this subsection.

Section 30. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 31. (1) It is the intent of the Legislature to:

(a) Reduce the rates of illness and death from lung cancer and other cancers and improve the quality of life among low-income African-American and Hispanic populations through increased access to early, effective screening and diagnosis, education, and treatment programs.

(b) Create a community faith-based disease-prevention program in conjunction with the Health Choice Network and other community health centers to build upon the natural referral and education networks in place within minority communities and to increase access to health service delivery in South Florida.

(c) Establish a funding source to build upon local private participation to sustain the operation of the program.

(2)(a) There is created the Jessie Trice Cancer Prevention Program, to be located, for administrative purposes, within the Department of Health, and operated from the community health centers within the Health Choice Network in South Florida.

(b) Funding will be provided to develop contracts with community health centers and local community faith-based education programs to provide cancer screening, diagnosis, education, and treatment services to low-income populations throughout the state. Pilot programs will be initially created in the communities of Goulds, Naranja, Coconut Grove, Liberty City, and East Little Havana in Dade County and Dunbar in Lee County.

Section 32. Funds to implement the provisions in this act are contingent upon a specific appropriation for that purpose in the General Appropriations Act.

Section 33. Florida Commission on Excellence in Health Care.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the health care delivery industry is one of the largest and most complex industries in Florida. The Legislature finds that additional focus on strengthening health care delivery systems by eliminating avoidable mistakes in the diagnosis and treatment of Floridians holds tremendous promise to increase the quality of health care services available to Floridians. To achieve this enhanced focus, it is the intent of the Legislature to create the Florida Commission on Excellence in Health Care to facilitate the development of a comprehensive statewide strategy for improving health care delivery systems through meaningful reporting standards, data collection and review, and quality measurement.

(2) DEFINITIONS.—As used in this act, the term:

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

(b) "Commission" means the Florida Commission on Excellence in Health Care.

(c) "Department" means the Department of Health.

(d) "Error," with respect to health care, means an unintended act, by omission or commission.

(e) "Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491, Florida Statutes.

(f) "Health care provider" means any health care facility or other health care organization licensed or certified to provide approved medical and allied health services in this state.

(3) COMMISSION; DUTIES AND RESPONSIBILITIES.—There is created the Florida Commission on Excellence in Health Care. The commission shall:

(a) Identify existing data sources that evaluate quality of care in Florida and collect, analyze, and evaluate this data.

(b) Establish guidelines for data sharing and coordination.

(c) Identify core sets of quality measures for standardized reporting by appropriate components of the health care continuum.

(d) Recommend a framework for quality measurement and outcome reporting.

(e) Develop quality measures that enhance and improve the ability to evaluate and improve care.

(f) Make recommendations regarding research and development needed to advance quality measurement and reporting.

(g) Evaluate regulatory issues relating to the pharmacy profession and recommend changes necessary to optimize patient safety.

(h) Facilitate open discussion of a process to ensure that comparative information on health care quality is valid, reliable, comprehensive, understandable, and widely available in the public domain.

(i) Sponsor public hearings to share information and expertise, identify "best practices," and recommend methods to promote their acceptance.

(j) Evaluate current regulatory programs to determine what changes, if any, need to be made to facilitate patient safety.

(k) Review public and private health care purchasing systems to determine if there are sufficient mandates and incentives to facilitate continuous improvement in patient safety.

(l) Analyze how effective existing regulatory systems are in ensuring continuous competence and knowledge of effective safety practices.

(m) Develop a framework for organizations that license, accredit, or credential health care practitioners and health care providers to more quickly and effectively identify unsafe providers and practitioners and to take action necessary to remove the unsafe provider or practitioner from practice or operation until such time as the practitioner or provider has proven safe to practice or operate.

(n) Recommend procedures for development of a curriculum on patient safety and methods of incorporating such curriculum into training, licensure, and certification requirements.

(o) Develop a framework for regulatory bodies to disseminate information on patient safety to health care practitioners, health care providers, and consumers through conferences, journal articles and editorials, newsletters, publications, and Internet websites.

(p) Recommend procedures to incorporate recognized patient safety considerations into practice guidelines and into standards related to the introduction and diffusion of new technologies, therapies, and drugs.

(q) Recommend a framework for development of community-based collaborative initiatives for error reporting and analysis and implementation of patient safety improvements.

(r) Evaluate the role of advertising in promoting or adversely affecting patient safety.

(4) MEMBERSHIP, ORGANIZATION, MEETINGS, PROCEDURES, STAFF.—

(a) The commission shall consist of:

1. The Secretary of Health and the Director of Health Care Administration;

2. One representative each from the following agencies or organizations: the Board of Medicine, the Board of Osteopathic Medicine, the Board of Pharmacy, the Board of Dentistry, the Board of Nursing, the Florida Dental Association, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Chiropractic Association, the Florida Chiropractic Society, the Florida Podiatric Medical Association, the Florida Nurses Association, the Florida Organization of Nursing Executives, the Florida Pharmacy Association, the Florida Society of Health System Pharmacists, Inc., the Florida Hospital Association, the Association of Community Hospitals and Health Systems of Florida, Inc., the Florida League of Health Systems, the Florida Health Care Risk Management Advisory Council, the Florida Health Care Association, the Florida Statutory Teaching Hospital Council, Inc., the Florida Statutory Rural Hospital Council, the Florida Association of Homes for the Aging, and the Florida Society for Respiratory Care;

3. Two health lawyers, appointed by the Secretary of Health, one of whom must be a member of the Health Law Section of The Florida Bar who defends physicians and one of whom must be a member of the Academy of Florida Trial Lawyers;

4. Two representatives of the health insurance industry, appointed by the Director of Health Care Administration, one of whom shall represent indemnity plans and one of whom shall represent managed care;

5. Five consumer advocates, consisting of one from the Association for Responsible Medicine, two appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House of Representatives;

6. Two legislators, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives; and

7. One representative of a Florida medical school appointed by the Secretary of Health.

Commission membership shall reflect the geographic and demographic diversity of the state.

(b) The Secretary of Health and the Director of Health Care Administration shall jointly chair the commission. Subcommittees shall be formed by the joint chairs, as needed, to make recommendations to the full commission on the subjects assigned. However, all votes on work products of the commission shall be at the full commission level, and all recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives must pass by a two-thirds vote of the full commission. Sponsoring agencies and organizations may designate an alternative member who may attend and vote on behalf of the sponsoring agency or organization in the event the appointed member is unable to attend a meeting of the commission or any subcommittee. The commission shall be staffed by employees of the Department of Health and the Agency for Health Care Administration. Sponsoring agencies or organizations must fund the travel and related expenses of their appointed members on the commission. Travel and related expenses for the consumer members of the commission shall be reimbursed by the state pursuant to section 112.061, Florida Statutes. The commission shall hold its first meeting no later than July 15, 2000.

(5) EVIDENTIARY PROHIBITIONS.—

(a) The findings, recommendations, evaluations, opinions, investigations, proceedings, records, reports, minutes, testimony, correspondence, work product, and actions of the commission shall be available to the public, but may not be introduced into evidence at any civil, criminal, special, or administrative proceeding against a health care practitioner or health care provider arising out of the matters which are the subject of the findings of the commission. Moreover, no member of the commission shall be examined in any civil, criminal, special, or administrative proceeding against a health care practitioner or health care provider as to any evidence or other matters

produced or presented during the proceedings of this commission or as to any findings, recommendations, evaluations, opinions, investigations, proceedings, records, reports, minutes, testimony, correspondence, work product, or other actions of the commission or any members thereof. However, nothing in this section shall be construed to mean that information, documents, or records otherwise available and obtained from original sources are immune from discovery or use in any civil, criminal, special, or administrative proceeding merely because they were presented during proceedings of the commission. Nor shall any person who testifies before the commission or who is a member of the commission be prevented from testifying as to matters within his or her knowledge in a subsequent civil, criminal, special, or administrative proceeding merely because such person testified in front of the commission.

(b) The findings, recommendations, evaluations, opinions, investigations, proceedings, records, reports, minutes, testimony, correspondence, work product, and actions of the commission shall be used as a guide and resource and shall not be construed as establishing or advocating the standard of care for health care practitioners or health care providers unless subsequently enacted into law or adopted in rule. Nor shall any findings, recommendations, evaluations, opinions, investigations, proceedings, records, reports, minutes, testimony, correspondence, work product, or actions of the commission be admissible as evidence in any way, directly or indirectly, by introduction of documents or as a basis of an expert opinion as to the standard of care applicable to health care practitioners or health care providers in any civil, criminal, special, or administrative proceeding unless subsequently enacted into law or adopted in rule.

(c) No person who testifies before the commission or who is a member of the commission may specifically identify any patient, health care practitioner, or health care provider by name. Moreover, the findings, recommendations, evaluations, opinions, investigations, proceedings, records, reports, minutes, testimony, correspondence, work product, and actions of the commission may not specifically identify any patient, health care practitioner, or health care provider by name.

(6) REPORT; TERMINATION.—The commission shall provide a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 2001. After submission of the report, the commission shall continue to exist for the purpose of assisting the Department of Health, the Agency for Health Care Administration, and the regulatory boards in their drafting of proposed legislation and rules to implement its recommendations and for the purpose of providing information to the health care industry on its recommendations. The commission shall be terminated June 1, 2001.

Section 34. The sum of $91,000 in nonrecurring general revenue is hereby appropriated from the General Revenue Fund to the Department of Health to cover costs of the Florida Commission on Excellence in Health Care relating to the travel and related expenses of staff and consumer members and the reproduction and dissemination of documents.

Section 35. 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 36. Section 381.00325, Florida Statutes, is created to read:

381.00325 Hepatitis A awareness program.—The Department of Health shall develop a Hepatitis A awareness program. This program shall include information regarding the appropriate education of the public and information regarding the availability of Hepatitis A vaccine. The department shall work with private businesses and associations in developing the program and in disseminating the information.

Section 37. Section 154.247, Florida Statutes, is created to read:

154.247 Financing of projects located outside of local agency.—Notwithstanding any provision of this part to the contrary, an authority may, if it finds that there will be a benefit or a cost savings to a health facility located within its jurisdiction, issue bonds for such health facility to finance projects for such health facility, or for another not-for-profit corporation under common control with such health facility, located outside the geographical limits of the local agency or outside this state.

Section 38. 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 39. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(4) The department shall administratively house the State Long-Term Care Ombudsman Council, created by s. 400.0067, and the local ~~district~~ long-term care ombudsman councils, created by s. 400.0069 and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that both the state and local ~~district~~ long-term care ombudsman councils operate in compliance with the Older Americans Act. The councils in performance of their duties shall not be subject to control, supervision, or direction by the department.

Section 40. Paragraph (h) of subsection (4) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(h) The State Long-Term Care Ombudsman Council and the local ~~district~~ long-term care ombudsman councils, with respect to the records of a patient who has been admitted from a nursing home or long-term care facility, when the councils are conducting an investigation involving the patient as authorized under part II of chapter 400, upon presentation of identification as a council member by the person making the request. Disclosure under this paragraph shall only be made after a competent patient or the patient's representative has been advised that disclosure may be made and the patient has not objected.

Section 41. Paragraph (b) of subsection (3) of section 400.0063, Florida Statutes, is amended to read:

400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.—

(3)

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the ombudsman in carrying out the duties of the office with respect to the abuse, neglect, or violation of rights of residents of long-term care facilities.

2. Assisting the state and local ~~district~~ ombudsman councils in carrying out their responsibilities under this part.

3. Initiating and prosecuting legal and equitable actions to enforce the rights of long-term care facility residents as defined in this chapter.

4. Serving as legal counsel to the state and local ~~district~~ ombudsman councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

Section 42. Paragraph (f) of subsection (1) and subsections (2) and (3) of section 400.0065, Florida Statutes, are amended to read:

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; conflict of interest.—

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(f) Provide administrative and technical assistance to state and local ~~district~~ ombudsman councils.

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(a) Assist and support the efforts of the State Long-Term Care Ombudsman Council in the establishment and coordination of local ~~district~~ ombudsman councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of federal and state funding authorized and appropriated, employ such personnel, including staff for local ~~district~~ ombudsman councils, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local ~~district~~ ombudsman councils in the performance of their duties. Staff positions for each local ~~district~~ ombudsman council may be established as career service positions, and shall be filled by the ombudsman after ~~in~~ consultation with the respective local ~~district~~ ombudsman council.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Annually prepare a budget request that shall be submitted to the Governor by the department for transmittal to the Legislature.

~~(f) Perform the duties specified in state and federal law without interference by officials of the Department of Elderly Affairs, the Agency for Health Care Administration, or the Department of Children and Family Services. The ombudsman shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives whenever organizational or departmental policy issues threaten the ability of the Office of State Long-Term Care Ombudsman to carry out its duties under state or federal law.~~

(g) Coordinate, to the greatest extent possible, state and local ~~district~~ ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(h) Enter into a cooperative agreement with the statewide and district human rights advocacy committees for the purpose of coordinating advocacy services provided to residents of long-term care facilities.

(i) Enter into a cooperative agreement with the office of state government which is responsible for investigating Medicaid fraud.

(3) The State Long-Term Care Ombudsman shall not:

(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

The Department of Elderly Affairs, in consultation with the ombudsman, shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.

Section 43. Section 400.0066, Florida Statutes, is created to read:

400.0066 Long-Term Care Ombudsman and departments of state government.—

(1) The Long-Term Care Ombudsman shall perform the duties specified in state and federal law.

(2) Officials from the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services shall not interfere in the performance of official duties of any ombudsman staff or volunteers.

(3) The Department of Elderly Affairs shall provide administrative support to the ombudsman program. The department shall meet the costs associated with these functions from funds appropriated to the department.

(4) The department shall include the costs associated with support of the ombudsman program in developing its budget requests for consideration by the Governor and submittal to the Legislature.

(5) The department may divert from the federal ombudsman appropriation an amount not to exceed 10 percent of the federal appropriation for the ombudsman.

Section 44. Section 400.0067, Florida Statutes, is amended to read:

400.0067 Establishment of State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Assist the ombudsman in reaching a consensus among local ~~district~~ ombudsman councils on issues of statewide concern.

(b) Serve as an appellate body in receiving from the local ~~district~~ ombudsman councils complaints not resolved at the local ~~district~~ level. The state ombudsman council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0069(3).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to develop procedures, in consultation with the Department of Elderly Affairs, relating to such investigations. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of long-term care facility residents and in developing procedures, in consultation with the Department of Elderly Affairs, relating to the receipt and resolution of such complaints.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a long-term care facility.

(f) Be authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from the adult protective services program of the Department of Children and Family Services.

~~(g) Enter into a cooperative agreement with the statewide and district human rights advocacy committees for the purpose of coordinating advocacy services provided to residents of long-term care facilities.~~

(g)~~(h)~~ Prepare an annual report describing the activities carried out by the ombudsman and the State Long-Term Care Ombudsman Council in the year for which the report is prepared. The State Long-Term Care Ombudsman Council shall submit the report to the Commissioner of the United States Administration on Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the House and Senate, the chairpersons of appropriate House and Senate committees, the Secretaries of Elderly Affairs and Children and Family Services, and the Director of Health Care Administration. The report shall be submitted at least 30 days before the convening of the regular session of the Legislature and shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities.

2. Evaluate the problems experienced by residents of long-term care facilities.

3. Contain recommendations for improving the quality of life of the residents and for protecting the health, safety, welfare, and rights of the residents.

4. Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long-term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services, and an assessment of how successfully the state long-term care ombudsman program has carried out its responsibilities under the Older Americans Act.

5. Provide policy and regulatory and legislative recommendations to solve identified problems; resolve residents' complaints; improve the quality of care and life of the residents; protect the health, safety, welfare, and rights of the residents; and remove the barriers to the optimal operation of the state long-term care ombudsman program.

6. Contain recommendations from the local ~~district~~ ombudsman councils regarding program functions and activities.

7. Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the local ~~district~~ and state councils.

(3)(a) The State Long-Term Care Ombudsman Council shall be composed of one active member designated by each local council plus three persons appointed by the Governor ~~a number of members equal to the number of district councils in the state plus three~~. ~~Each district ombudsman council, including the ombudsman councils for subdistricts 3A and 3B, shall appoint one member and the Governor shall appoint three members to the State Long-Term Care Ombudsman Council. An individual designated by a district ombudsman council must have been a member of a district ombudsman council for at least 1 year, and shall continue to serve as an active member at the district level. The Governor's appointments shall be made from a list of not fewer than eight nominees, to be selected by the secretary in consultation with the State Long-Term Care Ombudsman Council and submitted to the Governor. If the appointments are not made within 30 days after the Governor receives the list of nominees, the secretary shall, in consultation with the State Long-Term Care Ombudsman Council, appoint three members from the list of nominees submitted to the Governor. At least one member appointed by the Governor must be over 60 years of age.~~

(b) The ombudsman, in consultation with the secretary and the state ombudsman council, shall submit to the Governor a list of at least eight names of persons who are not serving on a local council.

(c) The Governor shall appoint three members chosen from the list, at least one of whom must be over 60 years of age.

(d) If the Governor's appointments are not made within 60 days after the ombudsman submits the list, the ombudsman, in consultation with the State

Long-Term Care Ombudsman Council, shall appoint three members, one of whom must be over 60 years of age.

(e)~~(b)~~ All members shall be appointed to serve 3-year terms. A member of the State Long-Term Care Ombudsman Council may not serve more than two consecutive terms. Any vacancy shall be filled in the same manner as the original appointment. The position of any member missing three consecutive regular meetings without cause shall be declared vacant. The finding of the ombudsman regarding cause shall be final and binding.

(f)~~(c)~~ The state ombudsman council shall elect a chairperson for a term of 1 year from among the members who have served for at least 1 year. The chairperson shall select a vice chairperson from among the members. The vice chairperson shall preside over the council in the absence of the chairperson.

(g)~~(d)~~ The state ombudsman council shall meet upon the call of the chairperson, at least quarterly or more frequently as needed.

(h)~~(e)~~ Members shall receive no compensation but shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

~~(4) Members shall be appointed and serve 3-year terms as provided by this section.~~

(4)~~(5)~~ No officer, employee, or representative of the Office of State Long-Term Care Ombudsman or of the State Long-Term Care Ombudsman Council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The Department of Elderly Affairs, in consultation with the ombudsman, shall adopt rules to identify and remove conflicts of interest.

(5)~~(6)~~ The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for all expenses for the state and local ~~district~~ ombudsman councils.

Section 45. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Local ~~District~~ long-term care ombudsman councils; duties; membership.—

(1) There shall be at least one long-term care ombudsman council in each of the planning and service areas of the Department of Elderly Affairs, which shall function under the direction of the ombudsman and the state ombudsman council.

(2) The duties of the local ~~district~~ ombudsman council are:

(a) To serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a long-term care facility.

(b) To discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for

in ss. 415.101-415.113 when applicable. Investigations may consist, in part, of one or more onsite administrative inspections.

(c) To elicit, receive, investigate, respond to, and resolve complaints made by, or on behalf of, long-term care facility residents.

(d) To review and, if necessary, to comment on, for their effect on the rights of long-term care facility residents, all existing or proposed rules, regulations, and other governmental policies relating to long-term care facilities.

(e) To review personal property and money accounts of Medicaid residents pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) To represent the interests of residents before government agencies and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) To carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), the local ~~district~~ ombudsman council is authorized, pursuant to ss. 400.19(1) and 400.434, to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0073(5).

(4) Each local ~~district~~ ombudsman council shall be composed of no less than 15 members and no more than 30 members from the local planning and service area ~~district~~, to include the following: one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may have limited practice in a long-term care facility; one registered nurse who has geriatric experience, if possible; one licensed pharmacist; one registered dietitian; at least six nursing home residents or representative consumer advocates for nursing home residents; at least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall the medical director of a long-term care facility or an employee of the Agency for Health Care Administration, the Department of Children and Family Services, or the Department of Elderly Affairs serve as a member or as an ex officio member of a council. Each member of the council shall certify that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10). Local ~~District~~ ombudsman councils are encouraged to recruit council members who are 60 years of age or older.

(5) All members shall be appointed to serve 3-year terms. Upon expiration of a term and in case of any other vacancy, the council shall select ~~appoint~~ a replacement by majority vote ~~of the council, subject to the approval of the Governor~~. The ombudsman shall review the selection of the council and recommend approval or disapproval to the Governor. If no action is

taken by the Governor to approve or disapprove the replacement of a member within 30 days after the ombudsman ~~council~~ has notified the Governor of his or her recommendation, ~~the appointment, the appointment of~~ the replacement shall be considered disapproved and the process for selection of a replacement shall be repeated ~~approved~~. ~~The term of any member missing three consecutive regular meetings without cause shall be declared vacant.~~

(6) The local ~~district~~ ombudsman council shall elect a chair for a term of 1 year from members who have served at least 1 year. The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(7) The local ~~district~~ ombudsman council shall meet upon the call of the chair or the ombudsman, at least once a month or more frequently as needed to handle emergency situations.

(8) A member of a local ~~district~~ ombudsman council shall receive no compensation but shall be reimbursed for travel expenses both within and outside the county of residence in accordance with the provisions of s. 112.061.

(9) The local ~~district~~ ombudsman councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the local ~~district~~ ombudsman councils in providing requested information and agency representatives at council meetings. The Department of Children and Family Services shall continue to provide space and in-kind administrative support for each district ombudsman council staff within available resources until the Legislature appropriates funds for office space and administrative support.

(10) No officer, employee, or representative of a local ~~district~~ long-term care ombudsman council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The Department of Elderly Affairs, in consultation with the ombudsman~~,~~ shall adopt rules to identify and remove conflicts of interest.

Section 46. Section 400.0071, Florida Statutes, is amended to read:

400.0071 Complaint procedures.—

(1) The state ombudsman council shall establish state and local ~~district~~ procedures for receiving complaints against a nursing home or long-term care facility or its employee.

(2) These procedures shall be posted in full view in every nursing home or long-term care facility. Every resident or representative of a resident shall receive, upon admission to a nursing home or long-term care facility, a printed copy of the procedures of the state and the local ~~district~~ ombudsman councils.

Section 47. Section 400.0073, Florida Statutes, is amended to read:

400.0073 State and local ~~district~~ ombudsman council investigations.—

(1) A local ~~district~~ ombudsman council shall investigate any complaint of a resident or representative of a resident based on an action by an administrator or employee of a nursing home or long-term care facility which might be:

(a) Contrary to law.

(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law.

(c) Based on a mistake of fact.

(d) Based on improper or irrelevant grounds.

(e) Unaccompanied by an adequate statement of reasons.

(f) Performed in an inefficient manner.

(g) Otherwise erroneous.

(2) In an investigation, both the state and local ~~district~~ ombudsman councils have the authority to hold hearings.

(3) Subsequent to an appeal from a local ~~district~~ ombudsman council, the state ombudsman council may investigate any nursing home or long-term care facility.

(4) In addition to any specific investigation made pursuant to a complaint, the local ~~district~~ ombudsman council shall conduct, at least annually, an investigation, which shall consist, in part, of an onsite administrative inspection, of each nursing home or long-term care facility within its jurisdiction.

(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:

(a) All inspections shall be at times and for durations necessary to produce the information required to carry out the duties of the council.

(b) No advance notice of an inspection shall be provided to any nursing home or long-term care facility, except that notice of followup inspections on specific problems may be provided.

(c) Inspections shall be conducted in a manner which will impose no unreasonable burden on nursing homes or long-term care facilities, consistent with the underlying purposes of this part. Unnecessary duplication of efforts among council members or the councils shall be reduced to the extent possible.

(d) Any ombudsman council member physically present for the inspection shall identify himself or herself and the statutory authority for his or her inspection of the facility.

(e) Inspections may not unreasonably interfere with the programs and activities of clients within the facility. Ombudsman council members shall respect the rights of residents.

(f) All inspections shall be limited to compliance with parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a) et seq., and any rules or regulations promulgated pursuant to such laws.

(g) No ombudsman council member shall enter a single-family residential unit within a long-term care facility without the permission of the resident or the representative of the resident.

(h) Any inspection resulting from a specific complaint made to an ombudsman council concerning a facility shall be conducted within a reasonable time after the complaint is made.

(6) An inspection may not be accomplished by forcible entry. Refusal of a long-term care facility to allow entry of any ombudsman council member constitutes a violation of part II, part III, or part VII of this chapter.

Section 48. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint resolution procedures.—

(1) Any complaint, including any problem identified by an ombudsman council as a result of an investigation, deemed valid and requiring remedial action by the local ~~district~~ ombudsman council shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such document, the administrator, in concurrence with the local ~~district~~ ombudsman council chair, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the local ~~district~~ ombudsman council may:

(a) Extend the target date if the council has reason to believe such action would facilitate the resolution of the complaint.

(b) In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.

(c) Refer the complaint to the state ombudsman council.

If the health, safety, welfare, or rights of the resident are in imminent danger, the local ~~district~~ long-term care ombudsman council may seek immediate legal or administrative remedies to protect the resident.

(2) Upon referral from the local ~~district~~ ombudsman council, the state ombudsman council shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action on a complaint found valid by the state ombudsman council, the state council may:

(a) In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.

(b) Recommend to the agency a series of facility reviews pursuant to s. 400.19(4) to assure correction and nonrecurrence of conditions that give rise to complaints against a long-term care facility.

(c) Recommend to the agency changes in rules for inspecting and licensing or certifying long-term care facilities, and recommend to the Agency for Health Care Administration changes in rules for licensing and regulating long-term care facilities.

(d) Refer the complaint to the state attorney for prosecution if there is reason to believe the long-term care facility or its employee is guilty of a criminal act.

(e) Recommend to the Agency for Health Care Administration that the long-term care facility no longer receive payments under the State Medical Assistance Program (Medicaid).

(f) Recommend that the agency initiate procedures for revocation of license in accordance with chapter 120.

(g) Seek legal, administrative, or other remedies to protect the health, safety, welfare, or rights of the resident.

If the health, safety, welfare, or rights of the resident are in imminent danger, the State Long-Term Care Ombudsman Council shall seek immediate legal or administrative remedies to protect the resident.

(3) The state ombudsman council shall provide, as part of its annual report required pursuant to s. 400.0067(2)(g)~~(h)~~, information relating to the disposition of all complaints to the Department of Elderly Affairs.

Section 49. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 400.0077, Florida Statutes, are amended to read:

400.0077 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) Resident records held by the ombudsman or by the state or a local ~~district~~ ombudsman council.

(4) Members of any state or local ~~district~~ ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under s. 400.414 except as may be necessary to enforce the provisions of this act.

(5) Subject to the provisions of this section, the Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules for the disclosure by the ombudsman or local ~~district~~ ombudsman councils of files maintained by the program.

Section 50. Subsection (2) of section 400.0079, Florida Statutes, is amended to read:

400.0079 Immunity.—

(2) The ombudsman or any person acting on behalf of the Office of State Long-Term Care Ombudsman or the state or a local ~~district~~ long-term care ombudsman council shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed, during the good faith performance of official duties.

Section 51. Section 400.0081, Florida Statutes, is amended to read:

400.0081 Access.—

(1) The Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local ~~district~~ long-term care ombudsman councils, or their representatives, shall have access to:

(a) Long-term care facilities and residents.

(b) Medical and social records of a resident for review, if:

1. The office has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate a complaint, if:

1. A legal guardian of the resident refuses to give permission.

2. The office has reasonable cause to believe that the guardian is not acting in the best interests of the resident.

3. The representative obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which the residents, or the general public, have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) Notwithstanding paragraph (1)(b), if, pursuant to a complaint investigation by the state ombudsman council or a local ~~district~~ ombudsman council, the legal representative of the resident refuses to give permission for the release of the resident's records, and if the Office of ~~the~~ State Long-Term Care Ombudsman ~~Council~~ has reasonable cause to find that the legal representative is not acting in the best interests of the resident, the medical and social records of the resident must be made available to the state or local ~~district~~ council as is necessary for the members of the council to investigate the complaint.

(3) The Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules to establish procedures to ensure access as described in this section.

Section 52. Subsections (1) and (2) of section 400.0083, Florida Statutes, are amended to read:

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the Office of ~~the~~ State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a local ~~district~~ long-term care ombudsman council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office of ~~the~~ State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a local ~~district~~ long-term care ombudsman council.

Section 53. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Agency oversight.—

(1) The Department of Elderly Affairs shall monitor the local ~~district~~ ombudsman councils responsible for carrying out the duties delegated by s. 400.0069 and federal law. The department, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules to establish the policies and procedures for the monitoring of local ~~district~~ ombudsman councils.

(2) The department is responsible for ensuring that the Office of State Long-Term Care Ombudsman prepares its annual report; provides information to public and private agencies, legislators, and others; provides appropriate training to representatives of the office or of the state or local ~~district~~ long-term care ombudsman councils; and coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(3) The Department of Elderly Affairs is the designated state unit on aging for purposes of complying with the federal Older Americans Act. The Department of Elderly Affairs shall ensure that the ombudsman program has the objectivity and independence required to qualify it for funding under the federal Older Americans Act, and shall carry out the long-term care ombudsman program through the Office of ~~the~~ State Long-Term Care Ombudsman ~~Council~~. The Department of Elderly Affairs shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman council has formulated in accordance with the Older Americans Act.

(b) Act as liaison between the federal program representatives, the staffs of the state and local ~~district~~ ombudsman councils, and members of the state and local ~~district~~ ombudsman councils.

Section 54. Section 400.0089, Florida Statutes, is amended to read:

400.0089 Agency reports.—The State Long-Term Care Ombudsman Council, shall, in cooperation with the Department of Elderly Affairs, maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. The council shall submit such data as part of its annual report required pursuant to s. 400.0067(2)(g)~~(h)~~ to the Agency for Health Care Administration, the Department of Children and Family Services, the Statewide Human Rights Advocacy Committee, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate.

Section 55. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.—The ombudsman shall provide appropriate training to all employees of the Office of State Long-Term Care Ombudsman and to the state and local ~~district~~ long-term care ombudsman councils, including all unpaid volunteers. The ombudsman shall implement the training program no later than June 1, 1994. No employee, officer, or representative of the office or of the state or local ~~district~~ long-term care ombudsman councils, other than the ombudsman, may carry out any authorized ombudsman duty or responsibility unless the person has received the training required by this section and has been approved by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local ~~district~~ long-term care ombudsman councils.

Section 56. Present subsections (8), (9), and (10) of section 400.021, Florida Statutes, are renumbered as subsections (7), (8), and (9), respectively, and present subsection (7) is renumbered as subsection (10) and amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(10)~~(7)~~ "Local ~~District~~ ombudsman council" means a local ~~district~~ long-term care ombudsman council established pursuant to s. 400.0069, located within the Older Americans Act planning and service areas.

Section 57. Paragraph (c) of subsection (1) and subsections (2) and (3) of section 400.022, Florida Statutes, are amended to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident.

The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ~~district~~ ombudsman council; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ~~district~~ ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ~~district~~ ombudsman council and adult abuse registry where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102. In order to determine whether the licensee is adequately protecting residents' rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local ~~district~~ in which the nursing home is located.

Section 58. Subsections (8), (9), (11), (12), (13), and (14) of section 400.0255, Florida Statutes, are amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for

purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local ~~district~~ long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ~~district~~ ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ~~district~~ ombudsman council.

(9) A resident may request that the local ~~district~~ ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ~~district~~ ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator's designee, must forward the request for review contained in the notice to the local ~~district~~ ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the local ~~district~~ ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. A local ~~district~~ ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the local ~~district~~ ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with the requirements of this section. If requested, the local ~~district~~ ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

(a) The resident, or the resident's legal representative or designee.

(b) The facility administrator, or the facility's legal representative or designee.

A representative of the local ~~district~~ long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from the provisions of s. 119.07(1):

(a) Names and addresses.

(b) Medical services provided.

(c) Social and economic conditions or circumstances.

(d) Evaluation of personal information.

(e) Medical data, including diagnosis and past history of disease or disability.

(f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by a local ~~district~~ long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

Section 59. Subsection (1) of section 400.19, Florida Statutes, is amended to read:

400.19 Right of entry and inspection.—

(1) The agency and any duly designated officer or employee thereof or a member of the State Long-Term Care Ombudsman Council or the local ~~district~~ long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 that provides extended care or other long-term care services, at any reasonable time in order to determine the state of compliance with the provisions of this part and rules in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court

authorizing same. Any application for a facility license or renewal thereof, made pursuant to this part, shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. The agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

Section 60. Subsection (1) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.—

(1) The agency shall provide information to the public about all of the licensed nursing home facilities operating in the state. The agency shall, within 60 days after an annual inspection visit or within 30 days after any interim visit to a facility, send copies of the inspection reports to the local ~~district~~ long-term care ombudsman council, the agency's local office, and a public library or the county seat for the county in which the facility is located.

Section 61. Subsection (6) and paragraph (c) of subsection (7) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(6) Prior to conducting a survey of the facility, the survey team shall obtain a copy of the local ~~district~~ long-term care ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the local ~~district nursing home and~~ long-term care ~~facility~~ ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. The agency shall assign a licensure status of standard or conditional to each nursing home.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the planning and service area ~~district~~ in which the facility is located, guardians of residents, and staff of the nursing home facility.

Section 62. Subsection (13) of section 400.419, Florida Statutes, is amended to read:

400.419 Violations; administrative fines.—

(13) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined $5,000 or more for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the area agencies on aging, the Statewide Human Rights Advocacy Committee, and the state and local ~~district nursing home~~ ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 63. Subsection (2) of section 400.428, Florida Statutes, is amended to read:

400.428 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ~~district~~ ombudsman council and adult abuse registry and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the district human rights advocacy committee, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the local ~~district~~ ombudsman council, adult abuse registry, Advocacy Center for Persons with Disabilities, Inc., and district human rights advocacy committee.

Section 64. Section 400.434, Florida Statutes, is amended to read:

400.434 Right of entry and inspection.—Any duly designated officer or employee of the department, the Department of Children and Family Services, the agency, the state or local fire marshal, or a member of the state or local ~~district~~ long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license; but no such entry or inspection of any premises may be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing such entry. The warrant requirement shall extend only to a facility which the agency has reason to believe is being operated or maintained as a facility without a license. Any application for a license or renewal thereof made

pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. Any current valid license shall constitute unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The agency shall retain the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before entering the facility, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours. Probable cause shall include, but is not limited to, evidence that the facility holds itself out to the public as a provider of personal care services or the receipt of a complaint by the long-term care ombudsman council about the facility.

Section 65. Subsection (2) of section 400.435, Florida Statutes, is amended to read:

400.435 Maintenance of records; reports.—

(2) Within 60 days after the date of the biennial inspection visit or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ~~district~~ ombudsman council in whose planning and service area, as defined in part II, the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district adult services and district alcohol, drug abuse, and mental health program offices.

Section 66. Paragraph (i) of subsection (1) and subsection (5) of section 400.4415, Florida Statutes, are amended to read:

400.4415 Assisted living facilities advisory committee.—

(1) There is created the assisted living facilities advisory committee, which shall assist the agency in developing and implementing a pilot rating system for facilities. The committee shall consist of nine members who are to be appointed by, and report directly to, the director of the agency. The membership is to include:

(i) One consumer representative from a local ~~district~~ long-term care ombudsman council.

(5) In determining the rating and evaluating the overall quality of care and services, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, long-term care ombudsman council members in the planning and service area ~~district~~ in which the facility is located, guardians of residents, and staff of the facility.

Section 67. Subsection (7) of section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal.—

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

Section 68. Subsection (2) of section 400.628, Florida Statutes, is amended to read:

400.628 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part. Residents must also be given the names, addresses, and telephone numbers of the local ~~district~~ ombudsman council and the adult abuse registry where they may lodge complaints.

Section 69. (1) The sum of $40,000 is appropriated from the General Revenue Fund to the Long-Term Care Ombudsman Program in the Department of Elderly Affairs to be used for training members of the state and local long-term care ombudsman councils.

(2) The sum of $40,000 is appropriated from the General Revenue Fund to the Long-Term Care Ombudsman Program in the Department of Elderly Affairs to be used for materials to educate residents of long-term care facilities, their families, visitors, facility staff, and the public about the ombudsman program and to encourage people to seek assistance from the Long-Term Care Ombudsman Program.

Section 70. Each state agency shall include in its standard contract document a requirement that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

Section 71. Subsection (37) is added to section 409.912, Florida Statutes, to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to

minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(37)(a) The agency shall implement a Medicaid prescribed-drug spending-control program that includes the following components:

1. Medicaid prescribed-drug coverage for brand-name drugs for adult Medicaid recipients not residing in nursing homes or other institutions is limited to the dispensing of four brand-name drugs per month per recipient. Children and institutionalized adults are exempt from this restriction. Antiretroviral agents are excluded from this limitation. No requirements for prior authorization or other restrictions on medications used to treat mental illnesses such as schizophrenia, severe depression, or bipolar disorder may be imposed on Medicaid recipients. Medications that will be available without restriction for persons with mental illnesses include atypical antipsychotic medications, conventional antipsychotic medications, selective serotonin re-uptake inhibitors, and other medications used for the treatment of serious mental illnesses. The agency shall also limit the amount of a prescribed drug dispensed to no more than a 34-day supply. The agency shall continue to provide unlimited generic drugs, contraceptive drugs and items, and diabetic supplies. The agency may authorize exceptions to the brand-name-drug restriction, based upon the treatment needs of the patients, only when such exceptions are based on prior consultation provided by the agency or an agency contractor, but the agency must establish procedures to ensure that:

a. There will be a response to a request for prior consultation by telephone or other telecommunication device within 24 hours after receipt of a request for prior consultation; and

b. A 72-hour supply of the drug prescribed will be provided in an emergency or when the agency does not provide a response within 24 hours as required by sub-subparagraph a.

2. Reimbursement to pharmacies for Medicaid prescribed drugs shall be set at the average wholesale price less 13.25 percent.

3. The agency shall develop and implement a process for managing the drug therapies of Medicaid recipients who are using significant numbers of prescribed drugs each month. The management process may include, but is not limited to, comprehensive, physician-directed medical-record reviews, claims analyses, and case evaluations to determine the medical necessity and appropriateness of a patient's treatment plan and drug therapies. The agency may contract with a private organization to provide drug-program-management services.

4. The agency may limit the size of its pharmacy network based on need, competitive bidding, price negotiations, credentialing, or similar criteria. The agency shall give special consideration to rural areas in determining the size and location of pharmacies included in the Medicaid pharmacy network. A pharmacy credentialing process may include criteria such as a pharmacy's

full-service status, location, size, patient educational programs, patient consultation, disease-management services, and other characteristics. The agency may impose a moratorium on Medicaid pharmacy enrollment when it is determined that it has a sufficient number of Medicaid-participating providers.

5. The agency shall develop and implement a program that requires Medicaid practitioners who prescribe drugs to use a counterfeit-proof prescription pad for Medicaid prescriptions. The agency shall require the use of standardized counterfeit-proof prescription pads by Medicaid-participating prescribers. The agency may implement the program in targeted geographic areas or statewide.

6. The agency may enter into arrangements that require manufacturers of generic drugs prescribed to Medicaid recipients to provide rebates of at least 15.1 percent of the average manufacturer price for the manufacturer's generic products. These arrangements shall require that if a generic-drug manufacturer pays federal rebates for Medicaid-reimbursed drugs at a level below 15.1 percent, the manufacturer must provide a supplemental rebate to the state in an amount necessary to achieve a 15.1-percent rebate level. If a generic-drug manufacturer raises its price in excess of the Consumer Price Index (Urban), the excess amount shall be included in the supplemental rebate to the state.

(b) The agency shall implement this subsection to the extent that funds are appropriated to administer the Medicaid prescribed-drug spending-control program. The agency may contract all or any part of this program to private organizations.

(c) The agency shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15 of each year. The report must include, but need not be limited to, the progress made in implementing Medicaid cost-containment measures and their effect on Medicaid prescribed-drug expenditures.

Section 72. There is created a Medicaid Pharmaceutical and Therapeutics Committee. The committee shall develop and implement a voluntary Medicaid preferred prescribed drug designation program. The program shall provide information to Medicaid providers on medically appropriate and cost efficient prescription drug therapies through the development and publication of a voluntary Medicaid preferred prescribed-drug list.

(1) The Medicaid Pharmaceutical and Therapeutics Committee shall be comprised of nine members appointed as follows: one practicing physician licensed under chapter 458, Florida Statutes, appointed by the Speaker of the House of Representatives from a list of recommendations from the Florida Medical Association; one practicing physician licensed under chapter 459, Florida Statutes, appointed by the Speaker of the House of Representatives from a list of recommendations from the Florida Osteopathic Medical Association; one practicing physician licensed under chapter 458, Florida Statutes, appointed by the President of the Senate from a list of recommendations from the Florida Academy of Family Physicians; one practicing podiatric physician licensed under chapter 461, Florida Statutes, appointed

by the President of the Florida Senate from a list of recommendations from the Florida Podiatric Medical Association; one trauma surgeon licensed under chapter 458, Florida Statutes, appointed by the Speaker of the House of Representatives from a list of recommendations from the American College of Surgeons; one practicing dentist licensed under chapter 466, Florida Statutes, appointed by the President of the Senate from a list of recommendations from the Florida Dental Association; one practicing pharmacist licensed under chapter 465, Florida Statutes, appointed by the Governor from a list of recommendations from the Florida Pharmacy Association; one practicing pharmacist licensed under chapter 465, Florida Statutes, appointed by the Governor from a list of recommendations from the Florida Society of Health System Pharmacists; and one health care professional with expertise in clinical pharmacology appointed by the Governor from a list of recommendations from the Pharmaceutical Research and Manufacturers Association. The members shall be appointed to serve for terms of 2 years from the date of their appointment. Members may be appointed to more than one term. The Agency for Health Care Administration shall serve as staff for the committee and assist them with all ministerial duties.

(2) Upon recommendation by the committee, the Agency for Health Care Administration shall establish the voluntary Medicaid preferred prescribed-drug list. Upon further recommendation by the committee, the agency shall add to, delete from, or modify the list. The committee shall also review requests for additions to, deletions from, or modifications of the list. The list shall be adopted by the committee in consultation with medical specialists, when appropriate, using the following criteria: use of the list shall be voluntary by providers and the list must provide for medically appropriate drug therapies for Medicaid patients which achieve cost savings in the Medicaid program.

(3) The Agency for Health Care Administration shall publish and disseminate the voluntary Medicaid preferred prescribed drug list to all Medicaid providers in the state.

Section 73. This act shall take effect July 1, 2000.

Approved by the Governor June 26, 2000.

Filed in Office Secretary of State June 26, 2000.