

Committee Substitute for Senate Bill No. 2568

An act relating to the protection and delivery of services to persons who are disabled, vulnerable, or elderly; creating s. 393.506, F.S.; allowing administration of medication by certain unlicensed staff for persons with developmental disabilities; providing requirements for such administration; creating s. 400.9685, F.S.; allowing administration of medication by certain unlicensed staff in nursing homes and related health care facilities for persons with developmental disabilities; providing requirements for such administration; amending s. 394.74, F.S.; providing for alternative payment methods for contracts for provision of local substance abuse and mental health programs; amending s. 415.102, F.S.; clarifying definitions; amending s. 765.401, F.S.; providing additional persons which may be given a proxy for the making of health care decisions; amending s. 744.102, F.S.; providing that a public guardian shall be considered a professional guardian for certain purposes; amending s. 744.108, F.S.; providing that certain costs relating to determination of certain fees shall be payable from the guardianship estate; amending s. 744.1083, F.S.; deleting obsolete language; increasing the maximum annual fee for registration as a professional guardian; requiring additional information for registration; transferring certain rule adoption authority and registration responsibilities from the Statewide Public Guardianship Office to the Department of Elderly Affairs; authorizing the Department of Elderly Affairs to contract with a not-for-profit entity to register professional guardians; providing that certain educational institutions may act as professional guardians without registering; amending s. 744.1085, F.S.; providing for additional regulation of professional guardians; providing for a professional examination as a condition of registration; providing additional requirements for registration as a professional guardian; providing that certain financial institutions are exempt from the regulations governing professional guardians; amending s. 744.3135, F.S.; limiting certain requirements to professional guardians; authorizing the court to require guardians to submit to credit history investigations and background screening; amending s. 744.3145, F.S.; providing training requirements for parents appointed as guardians of the property of their minor children; amending s. 744.444, F.S.; allowing guardians to employ care managers and disclose confidential information to an ombudsman without court approval; providing that such information shall remain confidential; authorizing the payment of certain costs; amending ss. 744.534 and 744.7021, F.S.; providing that the executive director of the Statewide Public Guardianship Office shall be appointed by the Secretary of Elderly Affairs, rather than by the Governor; transferring certain responsibilities from the Statewide Public Guardianship Office to the Department of Elderly Affairs; amending s. 744.704, F.S.; removing a limitation on what wards a public guardian may serve; creating the Guardianship Task Force to examine and make recommendations regarding guardianship in this state; providing for

membership; providing for appointment; providing for term of existence; providing that certain prior offenses shall be considered in conducting employment screening, notwithstanding the provisions of section 64 of ch. 95-228, Laws of Florida; amending s. 400.071, F.S.; requiring applicants for licensure as a nursing home to provide proof of a legal right to occupy the property; amending s. 400.414, F.S.; delineating the types and number of deficiencies justifying denial, revocation, or suspension of a license as an assisted living facility; amending s. 400.417, F.S.; providing an alternative method of providing notice to an assisted living facility that a license must be renewed; amending s. 400.419, F.S.; providing that administrative fines for assisted living facilities or its personnel shall be imposed by the Agency for Health Care Administration in the manner provided in ch. 120, F.S.; amending s. 400.0239, F.S.; providing for deposit of civil monetary fines in the Quality of Long-Term Care Facility Improvement Trust Fund; providing for additional purposes for which funds from such trust fund may be expended; amending s. 400.141, F.S.; providing for enforcement of minimum staffing standards for a nursing facility within a range; amending s. 400.235, F.S.; allowing reviewed financial statements to be submitted for the Gold Seal program; amending s. 400.452, F.S.; revising training and education requirements of the Department of Elderly Affairs for assisted living facilities; deleting a requirement that fees for training and education programs be based on the percentage of residents receiving monthly optional supplementation payments; amending s. 430.502, F.S.; requiring the Agency for Health Care Administration and the Department of Health to seek and implement a Medicaid home and community-based waiver for persons with Alzheimer's disease; requiring the development of waiver program standards; providing for consultation with the presiding officers of the Legislature; providing for a contingent future repeal of such waiver program; amending s. 400.557, F.S.; providing an alternative method of providing notice to an adult day care center that a license must be renewed; amending s. 400.619, F.S.; requiring that the Agency for Health Care Administration provide advance notice to an adult family-care home that a license must be renewed; reenacting and amending s. 400.980, F.S.; providing that the provisions governing background screening of persons involved with health care services pools shall not stand repealed; amending s. 408.061, F.S.; exempting nursing homes and continuing care facilities from certain financial reporting requirements; amending s. 408.062, F.S.; providing that the Agency for Health Care Administration is not required to evaluate financial reports of nursing homes; amending s. 408.831, F.S.; requiring that licensees of the Agency for Health Care Administration pay or arrange for payment of amounts owed to the agency by the licensee prior to transfer of the license or issuance of a license to a transferee; amending s. 409.9116, F.S.; correcting a cross-reference; providing an effective date.

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

Section 1. Section 393.506, Florida Statutes, is created to read:

393.506 Administration of medication.—

(1) Notwithstanding the provisions of part I of chapter 464, the Nurse Practice Act, unlicensed direct care service staff providing services to persons with developmental disabilities may administer oral, transdermal, inhaled, or topical prescription medications as provided in this section.

(a) For day programs, as defined in s. 393.063, the director of the facility or program shall designate in writing unlicensed direct care services staff who are eligible to be trained to assist in the administration of or to administer medication.

(b) For intermediate care facilities for the developmentally disabled licensed pursuant to part XI of chapter 400, unlicensed staff designated by the director may provide medication assistance under the general supervision of a registered nurse licensed pursuant to chapter 464.

(2) Each facility, institution, or program must include in its policies and procedures a plan for training designated staff to ensure the safe handling, storage, and administration of prescription medication. These policies and procedures must be approved by the department before unlicensed direct care services staff assist with medication.

(3) The policies and procedures must include, at a minimum, the following provisions:

(a) An expressed and informed consent for each client.

(b) The director of the facility, program, or provider must maintain a copy of the written prescription, and that prescription must include the name of the medication, the dosage and administration schedule, the reason for the prescription, and the termination date.

(c) Each prescribed medication shall be kept in its original container and in a secure location.

(4) The training required in this section shall be conducted by a registered nurse or a physician licensed pursuant to chapter 458 or chapter 459.

Section 2. Section 400.9685, Florida Statutes, is created to read:

400.9685 Administration of medication.—

(1) Notwithstanding the provisions of the Nurse Practice Act, part I of chapter 464, unlicensed direct care services staff who are providing services to clients in Intermediate Care Facilities for the Developmentally Disabled, licensed pursuant to this part, may administer prescribed, prepackaged, pre-measured medications under the general supervision of a registered nurse as provided in this section and applicable rules. Training required by this section and applicable rules must be conducted by a registered nurse licensed pursuant to chapter 464, or a physician licensed pursuant to chapter 458 or chapter 459.

(2) Each facility that allows unlicensed direct care service staff to administer medications pursuant to this section must:

(a) Develop and implement policies and procedures that include a plan to ensure the safe handling, storage, and administration of prescription medication.

(b) Maintain written evidence of the expressed and informed consent for each client.

(c) Maintain a copy of the written prescription including the name of the medication, the dosage, and administration schedule.

(d) Maintain documentation regarding the prescription including the name, dosage, and administration schedule, reason for prescription, and the termination date.

(e) Maintain documentation of compliance with required training.

(3) Agency rules shall specify the following as it relates to the administration of medications by unlicensed staff:

(a) Medications authorized and packaging required.

(b) Acceptable methods of administration.

(c) A definition of "general supervision".

(d) Minimum educational requirements of staff.

(e) Criteria of required training and competency that must be demonstrated prior to the administration of medications by unlicensed staff including in-service training.

(f) Requirements for safe handling, storage, and administration of medications.

Section 3. Subsection (2) of section 394.74, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

394.74 Contracts for provision of local substance abuse and mental health programs.—

(2)(a) Contracts for service shall be consistent with the approved district plan.

(b) Notwithstanding s. 394.76(3)(a) and (c), the department may use unit cost methods of payment in contracts for purchasing mental health and substance abuse services. The unit cost contracting system must account for those patient fees that are paid on behalf of a specific client and those that are earned and used by the provider for those services funded in whole or in part by the department. The department may also use a fee-for-service arrangement, case rates, or a capitation arrangement in order to account for those services.

(c) The department may reimburse actual expenditures for startup contracts and fixed capital outlay contracts in accordance with contract specifications.

(6) The department may use a fee-for-service arrangement, case rates, or capitation in order to account for mental health and substance abuse services.

Section 4. Subsections (1) and (26) of section 415.102, Florida Statutes, are amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(1) “Abuse” means any willful act or threatened act by a caregiver that causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.

(26) “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

Section 5. Paragraph (h) is added to subsection (1) of section 765.401, Florida Statutes, to read:

765.401 The proxy.—

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider’s bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that upon request, the provider shall make available a second physician, not involved in the patient’s care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility’s bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

Section 6. Subsection (15) of section 744.102, Florida Statutes, is amended to read:

744.102 Definitions.—As used in this chapter, the term:

(15) "Professional guardian" means any guardian who receives or has at any time received compensation for services rendered to more than two wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

Section 7. Subsection (8) is added to section 744.108, Florida Statutes, to read:

744.108 Guardian's and attorney's fees and expenses.—

(8) When court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including fees for the guardian's attorney, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.

Section 8. Section 744.1083, Florida Statutes, is amended to read:

744.1083 Professional guardian registration.—

(1) ~~Effective January 1, 2003, A professional guardian must register with the Statewide Public Guardianship Office established in part IX of this chapter. The Statewide Public Guardianship Office may contract with the clerk of the court in each county to perform the administrative functions associated with registering professional guardians.~~

(2) Annual registration shall be made on forms furnished by the Statewide Public Guardianship Office and accompanied by the applicable registration fee as determined by rule. Such fee shall not exceed \$100 \$25.

(3) Registration must include the following:

(a) If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the professional guardian.

(b) If the professional guardian is a partnership or association, the name, address, and date of birth of every member, and the employer identification number of the partnership or association.

(c) If the professional guardian is a corporation, the name, address, and employer identification number of the corporation; the name, address, and date of birth of each of its directors and officers; the name of its resident agent; and the name, address, and date of birth of each person having at least a 10-percent interest in the corporation.

(d) The name, address, date of birth, and employer identification number, if applicable, of each person providing guardian-delegated financial or personal guardianship services for wards.

(e) Documentation that the bonding and educational requirements of s. 744.1085 have been met, and that background screening has been conducted pursuant to s. 744.3135. Compliance with this section shall constitute compliance with the attestation requirement of s. 435.04(5).

(f) Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through partnership, corporation, or any other business organization.

(4) The Department of Elderly Affairs ~~Statewide Public Guardianship Office~~ may adopt rules necessary to administer this section.

(5) A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, may, but shall not be required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described in this subsection elects to register as a professional guardian under this subsection, the requirements of subsection (3) shall not apply and the registration shall include only the name, address, and employer identification number of the registrant, the name and address of its registered agent, if any, and the documentation described in paragraph (3)(e).

(6) The Department of Elderly Affairs may contract with the Florida Guardianship Foundation or other not-for-profit entity to register professional guardians.

(7) The department or its contractor shall ensure that the clerks of the court and the Chief Judge of each judicial circuit receive information about each registered professional guardian.

(8) A state college or university or an independent college or university as described pursuant to s. 1009.98(3)(a), may, but shall not be required to, register as a professional guardian under this section. If a state college or university or independent college or university elects to register as a professional guardian under this subsection, the requirements of subsection (3) shall not apply and the registration shall include only the name, address, and employer identification number of the registrant.

Section 9. Subsection (3) of section 744.1085, Florida Statutes, is amended and subsections (4) through (10) are added to said section to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian defined in s. 744.102(15) and public guardian, ~~on October 1, 1997, must receive a minimum of 40 hours of instruction and training by October 1, 1998, or within 1 year after becoming a professional guardian, whichever occurs later.~~ Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a

course approved or offered by the Statewide Public Guardianship Office. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

(4) Each professional guardian must allow, at the guardian's expense, an investigation of the guardian's credit history, and the credit history of employees of the guardian, in a manner prescribed by the Department of Elderly Affairs.

(5) As required in s. 744.3135, each professional guardian shall allow a level 2 background screening of the guardian and employees of the guardian in accordance with the provisions of s. 435.04.

(6) After July 1, 2005, each professional guardian shall be required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.

(a) The Department of Elderly Affairs shall determine the minimum examination score necessary for passage of guardianship examinations.

(b) The Department of Elderly Affairs shall determine the procedure for administration of the examination.

(c) The Department of Elderly Affairs or its contractor shall charge an examination fee for the actual costs of the development and the administration of the examination, not to exceed \$500.

(d) The Department of Elderly Affairs may recognize passage of a national guardianship examination in lieu of all or part of the examination approved by the Department of Elderly Affairs, except that all professional guardians must take and pass an approved examination section related to Florida law and procedure.

(7) The Department of Elderly Affairs shall set the minimum score necessary to demonstrate professional guardianship competency.

(8) The Department of Elderly Affairs shall waive the examination requirement in paragraph (6) if a professional guardian can provide:

(a) Proof that the guardian has actively acted as a professional guardian for 5 years or more; and

(b) A letter from a circuit judge before whom the professional guardian practiced at least 1 year which states that the professional guardian had demonstrated to the court competency as a professional guardian.

(9) After July 1, 2004, the court shall not appoint any professional guardian who has not met the requirements of this section and s. 744.1083.

(10) This section does not apply to a professional guardian or the employees of that professional guardian when that guardian is a trust company, a state banking corporation, state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking associa-

tion or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 10. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the Florida Department of Law Enforcement for processing. The professional guardian shall pay to the clerk of the court a fee of \$5 for handling and processing professional guardian files. The results of the fingerprint checks shall be forwarded to the clerk of court who shall maintain the results in a guardian file and shall make the results available to the court. If credit or criminal investigations are required, the court must consider the results of the investigations in appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must resubmit, at their own expense, to an investigation of credit history, and undergo level 1 background screening as required under s. 435.03, at least every 2 years after the date of their appointment. At any time, the court may require guardians or their employees to submit to an investigation of credit history and undergo level 1 background screening as required under s. 435.03. The court must consider the results of these investigations in reappointing a guardian. This section shall not apply to a professional guardian, or to the employees of a professional guardian, that is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 11. Section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.—

(1) Each ward is entitled to a guardian competent to perform the duties of a guardian necessary to protect the interests of the ward.

(2) Each person appointed by the court to be a guardian, other than a parent who is the guardian of the property of a minor child, must receive a minimum of 8 hours of instruction and training which covers:

- (a) The legal duties and responsibilities of the guardian;
- (b) The rights of the ward;
- (c) The availability of local resources to aid the ward; and

(d) The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.

(3) Each person appointed by the court to be the guardian of the property of his or her minor child must receive a minimum of 4 hours of instruction and training that covers:

(a) The legal duties and responsibilities of the guardian of the property;

(b) The preparation of the initial inventory and annual guardianship accountings for the ward's property; and

(c) Use of guardianship assets.

~~(4)~~⁽³⁾ Each person appointed by the court to be a guardian must complete the required number of 8 hours of instruction and education within 1 year after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

~~(5)~~⁽⁴⁾ Expenses incurred by the guardian to satisfy the education requirement may be paid from the ward's estate, unless the court directs that such expenses be paid by the guardian individually.

~~(6)~~⁽⁵⁾ The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian, the duties assigned to the guardian, and the needs of the ward.

~~(7)~~⁽⁶⁾ The provisions of this section do not apply to professional guardians.

Section 12. Subsection (13) of section 744.444, Florida Statutes, is amended, and subsections (16) and (17) are added to said section to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(13) When reasonably necessary, employ persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.

(16) Pay or reimburse costs incurred and reasonable fees or compensation to persons, including attorneys, employed by the guardian pursuant to subsection (13) from the assets of the guardianship estate, subject to obtaining court approval of the annual accounting.

(17) Provide confidential information about a ward that is related to an investigation arising under part I of chapter 400 to a local or state ombudsman council member conducting such an investigation. Any such ombudsman shall have a duty to maintain the confidentiality of such information.

Section 13. Paragraph (c) of subsection (2) of section 744.534, Florida Statutes, is amended to read:

744.534 Disposition of unclaimed funds held by guardian.—

(2)

(c) Within 5 years from the date of deposit with the State Treasurer, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of his or her right to them, any person entitled to the funds, before or after payment to the State Treasurer and deposit as provided for in paragraph (a), may obtain a court order directing the payment of the funds to him or her. All funds deposited with the State Treasurer and not claimed within 5 years from the date of deposit shall escheat to the state to be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of public guardianship as determined by the Secretary of Elderly Affairs Statewide Public Guardianship Office established in part IX of this chapter.

Section 14. Section 744.7021, Florida Statutes, is amended to read:

744.7021 Statewide Public Guardianship Office.—There is hereby created the Statewide Public Guardianship Office within the Department of Elderly Affairs. ~~The Department of Elderly Affairs shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the department. The Statewide Public Guardianship Office may request the assistance of the Inspector General of the Department of Elderly Affairs in providing auditing services, and the Office of General Counsel of the department may provide assistance in rulemaking and other matters as needed to assist the Statewide Public Guardianship Office. The Statewide Public Guardianship Office shall not be subject to control, supervision, or direction by the Department of Elderly Affairs in the performance of its duties.~~

(1) The Secretary of Elderly Affairs shall appoint the executive director, who shall be the head of the Statewide Public Guardianship Office ~~is the executive director, who shall be appointed by the Governor.~~ The executive director must be a member of The Florida Bar, knowledgeable of licensed attorney with a background in guardianship law and knowledge of the social services available to meet the needs of incapacitated persons, shall serve on a full-time basis, and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Public Guardianship Office in accordance with state and federal law. The executive director shall serve at the pleasure of and report to the Secretary Governor.

(2) The executive director Statewide Public Guardianship Office shall, within available resources, have oversight responsibilities for all public guardians.

(a) The executive director office shall review the current public guardian programs in Florida and other states.

(b) The executive director office, in consultation with local guardianship offices, shall develop statewide performance measures and standards.

(c) The executive director office shall review the various methods of funding guardianship programs, the kinds of services being provided by such programs, and the demographics of the wards. In addition, the executive director office shall review and make recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of the wards.

~~(d) No later than October 1, 2000, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. No later than October 1, 2001, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed public guardianship plan including alternatives for meeting the state's guardianship needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. By January 1, 2004, and by January 1 of each year thereafter, the executive director office shall provide a status report and provide further recommendations to the Secretary that address the need for public guardianship services and related issues.~~

(e) The executive director office may provide assistance to local governments or entities in pursuing grant opportunities. The executive director office shall review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds. The executive director office shall diligently seek ways to use existing programs and services to meet the needs of public wards.

~~(f) The executive director, in consultation with the Florida Guardianship Foundation, office shall develop a guardianship training program curriculum that. The training program may be offered to all guardians whether public or private. The office shall establish a curriculum committee to develop the training program specified in this part. The curriculum committee shall include, but not be limited to, probate judges. A fee may be charged to private guardians in order to defray the cost of providing the training. In addition, a fee may be charged to any training provider for up to the actual cost of the review and approval of their curriculum. Any fees collected pursuant to this paragraph shall be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used for the guardianship training program.~~

(3) The executive director office may conduct or contract for demonstration projects authorized by the Department of Elderly Affairs, within funds appropriated or through gifts, grants, or contributions for such purposes, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil

and constitutional rights of persons of marginal or diminished capacity. Any gifts, grants, or contributions for such purposes shall be deposited in the Department of Elderly Affairs Administrative Trust Fund.

(4) The Department of Elderly Affairs office has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out the provisions of this section.

Section 15. Subsections (1) and (3) of section 744.704, Florida Statutes, are amended to read:

744.704 Powers and duties.—

(1) A public guardian may serve as a guardian of a person adjudicated incapacitated under this chapter:

(a) if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian; ~~and~~

~~(b) If the assets of the ward do not exceed the asset level for Medicaid eligibility, exclusive of homestead and exempt property as defined in s. 4, Art. X of the State Constitution, and the ward's income, from all sources, is less than \$4,000 per year. Income from public welfare programs, supplemental security income, optional state supplement, a disability pension, or a social security pension shall be excluded in such computation. However, a ward whose total income, counting excludable income, exceeds \$30,000 a year may not be served.~~

(3) ~~The public guardian shall primarily serve incapacitated persons who are of limited financial means, as defined by contract or rule of the Department of Elderly Affairs. The public guardian may serve incapacitated persons of greater financial means to the extent the Department of Elderly Affairs determines to be appropriate. If the public guardian finds that the assets or the income of the ward exceeds the amounts set forth in paragraph (1)(b), the public guardian shall submit a resignation and petition the court for appointment of a successor guardian. The public guardian shall not be dismissed until such time that a private guardian is appointed. If a qualified successor guardian is not available, the public guardian may remain as guardian, provided the guardian makes reasonable efforts to find a successor and reports to the court every 6 months on efforts to obtain a successor.~~

Section 16. (1) There is created within the Department of Elderly Affairs a Guardianship Task Force for the purpose of examining guardianship and incapacity and making recommendations to the Governor and the Legislature for the improvement of processes and procedures related to guardianship and incapacity. The department shall staff the task force, and the Secretary of Elderly Affairs shall appoint the chair from among the task force membership. The members of the task force shall serve without compensation. Unless specified otherwise, task force members shall be appointed by the organizations they represent, and the cost of members' participation shall be borne by their appointing organization. Any member who is a public employee is entitled to reimbursement for per diem and travel expenses by the appointing department.

(2) The Guardianship Task Force shall identify the characteristics of Florida guardianship practice. It shall also identify best practices and recommend specific statutory and other changes for achieving such best practices and for achieving citizen access to quality guardianship services. The task force shall make a preliminary report to the Secretary of Elderly Affairs no later than January 1, 2004, and its final report to the secretary shall be made no later than January 1, 2005.

(3) The Guardianship Task Force shall consist of ten members, including a judge with experience in guardianship proceedings who is appointed by the Florida Conference of Circuit Judges, a representative of the Association of Clerks of Court, a professor of law with experience in elder issues appointed by the Secretary of Elderly Affairs, a representative of the Florida State Guardianship Association, a representative of the Florida Guardianship Foundation, a representative of the Real Property and Probate Section of The Florida Bar, a representative of the Elder Law Section of The Florida Bar, a professional as provided in section 744.331(3), Florida Statutes, with experience performing examinations and determining incapacity, a representative of the Florida Banker's Association, and a citizen or consumer appointed by the Executive Director of the Florida office of the American Association of Retired Persons.

(4) The Guardianship Task Force may appoint ex officio members who possess needed expertise to assist the task force in its work. The task force will cease to exist May 6, 2005.

Section 17. Notwithstanding the provisions of section 64 of chapter 95-228, Laws of Florida, the provisions of chapter 435, Florida Statutes, as created therein and as subsequently amended, and any reference thereto, shall apply to all offenses regardless of the date on which offenses referenced in chapter 435, Florida Statutes, were committed, unless specifically provided otherwise in a provision other than section 64 of chapter 95-228, Laws of Florida.

Section 18. Subsection (12) is added to section 400.071, Florida Statutes, to read:

400.071 Application for license.—

(12) The applicant must provide the agency with proof of a legal right to occupy the property before a license may be issued. Proof may include, but is not limited to, copies of warranty deeds, lease or rental agreements, contracts for deeds, or quitclaim deeds.

Section 19. Subsection (1) of section 400.414, Florida Statutes, is amended to read:

400.414 Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—

(1) The agency may deny, revoke, or suspend any license issued under this part, or impose an administrative fine in the manner provided in chapter 120, for any of the following actions by an assisted living facility, for the

actions of any person subject to level 2 background screening under s. 400.4174, or for the actions of any facility employee:

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

(b) The determination by the agency that the owner lacks the financial ability to provide continuing adequate care to residents.

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

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

(e) A citation of any of the following deficiencies as defined in s. 400.419:

1. One or more cited class I deficiencies.

2. Three or more cited class II deficiencies.

3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified ~~One or more class I, three or more class II, or five or more repeated or recurring identical or similar class III violations that are similar or identical to violations which were identified by the agency within the last 2 years.~~

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

(g) A determination that an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person is granted an exemption.

(h) Violation of a moratorium.

(i) Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

(j) A fraudulent statement or omission of any material fact on an application for a license or any other document required by the agency, including the submission of a license application that conceals the fact that any board member, officer, or person owning 5 percent or more of the facility may not meet the background screening requirements of s. 400.4174, or that the

applicant has been excluded, permanently suspended, or terminated from the Medicaid or Medicare programs.

(k) An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local authority having jurisdiction or the State Fire Marshal.

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

(m) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter.

(n) Any act constituting a ground upon which application for a license may be denied.

Administrative proceedings challenging agency action under this subsection shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

Section 20. Subsection (1) of section 400.417, Florida Statutes, is amended to read:

400.417 Expiration of license; renewal; conditional license.—

(1) Biennial licenses, unless sooner suspended or revoked, shall expire 2 years from the date of issuance. Limited nursing, extended congregate care, and limited mental health licenses shall expire at the same time as the facility's standard license, regardless of when issued. The agency shall notify the facility ~~by certified mail~~ at least 120 days prior to expiration that a renewal license is necessary to continue operation. The notification must be provided electronically or by mail delivery. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. Fees must be prorated. The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current fee.

Section 21. Section 400.419, Florida Statutes, is amended to read:

400.419 Violations; imposition of administrative fines; grounds.—

(1) The agency shall impose an administrative fine in the manner provided in chapter 120 for any of the actions or violations as set forth within this section by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 400.4174, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2)(4) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:

(a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine for a cited class I violation is subject to an administrative fine in an amount not less than \$5,000 and not exceeding \$10,000 for each violation. A fine may be levied notwithstanding the correction of the violation.

(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. The agency shall impose an administrative fine for a cited class II violation is subject to an administrative fine in an amount not less than \$1,000 and not exceeding \$5,000 for each violation. A fine shall be levied notwithstanding the correction of the violation ~~A citation for a class II violation must specify the time within which the violation is required to be corrected.~~

(c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or class II violations. The agency shall impose an administrative fine for a cited class III violation in an amount is subject to an administrative fine of not less than \$500 and not exceeding \$1,000 for each violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense.

(d) Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a building or to required reports, forms, or documents that do not have the potential of negatively affecting residents. These violations are of a type that the agency determines do not threaten the health, safety, or security of residents of the facility. The agency shall impose an administrative fine for a cited class IV violation in an amount A facility that does not correct a class IV violation within the time specified in the agency-approved corrective action plan is subject to an administrative fine of not less than \$100 and not exceeding ~~nor more than~~ \$200 for each violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, no fine shall be imposed. Any class IV violation that is corrected during the time an agency survey is being conducted will be identified as an agency finding and not as a violation.

~~(3)(2)~~ In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(e) The licensed capacity of the facility.

~~(4)~~⁽³⁾ Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

~~(5)~~⁽⁴⁾ Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

~~(6)~~⁽⁵⁾ For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.

~~(7)~~⁽⁶⁾ Any unlicensed facility that continues to operate after agency notification is subject to a \$1,000 fine per day.

~~(8)~~⁽⁷⁾ Any licensed facility whose owner or administrator concurrently operates an unlicensed facility shall be subject to an administrative fine of \$5,000 per day.

~~(9)~~⁽⁸⁾ Any facility whose owner fails to apply for a change-of-ownership license in accordance with s. 400.412 and operates the facility under the new ownership is subject to a fine of \$5,000.

~~(10)~~⁽⁹⁾ In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 400.428(3)(c) to verify the correction of the violations.

~~(11)~~⁽¹⁰⁾ The agency, as an alternative to or in conjunction with an administrative action against a facility for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification. The agency, instead of fixing a period within which the facility shall enter into compliance with standards, may request

a plan of corrective action from the facility which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(12)(11) Administrative fines paid by any facility under this section shall be deposited into the Health Care Trust Fund and expended as provided in s. 400.418.

(13)(12) 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 Florida Statewide Advocacy Council, and the state and local 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 22. Subsections (1) and (2) of section 400.0239, Florida Statutes, are amended to read:

400.0239 Quality of Long-Term Care Facility Improvement Trust Fund.—

(1) There is created within the Agency for Health Care Administration a Quality of Long-Term Care Facility Improvement Trust Fund to support activities and programs directly related to improvement of the care of nursing home and assisted living facility residents. The trust fund shall be funded through proceeds generated pursuant to ss. 400.0238 and 400.4298, through funds specifically appropriated by the Legislature, ~~and~~ through gifts, endowments, and other charitable contributions allowed under federal and state law, and through federal nursing home civil monetary penalties collected by the Centers for Medicare and Medicaid Services and returned to the state. These funds must be utilized in accordance with federal requirements.

(2) Expenditures from the trust fund shall be allowable for direct support of the following:

(a) Development and operation of a mentoring program, in consultation with the Department of Health and the Department of Elderly Affairs, for increasing the competence, professionalism, and career preparation of long-term care facility direct care staff, including nurses, nursing assistants, and social service and dietary personnel.

(b) Development and implementation of specialized training programs for long-term care facility personnel who provide direct care for residents with Alzheimer's disease and other dementias, residents at risk of developing pressure sores, and residents with special nutrition and hydration needs.

(c) Addressing areas of deficient practice identified through regulation or state monitoring.

(d)(e) Provision of economic and other incentives to enhance the stability and career development of the nursing home direct care workforce, including paid sabbaticals for exemplary direct care career staff to visit facilities throughout the state to train and motivate younger workers to commit to careers in long-term care.

(e)(d) Promotion and support for the formation and active involvement of resident and family councils in the improvement of nursing home care.

(f) Evaluation of special residents' needs in long-term care facilities, including challenges in meeting special residents' needs, appropriateness of placement and setting, and cited deficiencies related to caring for special needs.

(g) Other initiatives authorized by the Centers for Medicare and Medicaid Services for the use of federal civil monetary penalties, including projects recommended through the Medicaid "Up-or-Out" Quality of Care Contract Management Program pursuant to s. 400.148.

Section 23. Subsection (15) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.— Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(15) Submit semiannually to the agency, or more frequently if requested by the agency, information regarding facility staff-to-resident ratios, staff turnover, and staff stability, including information regarding certified nursing assistants, licensed nurses, the director of nursing, and the facility administrator. For purposes of this reporting:

(a) Staff-to-resident ratios must be reported in the categories specified in s. 400.23(3)(a) and applicable rules. The ratio must be reported as an average for the most recent calendar quarter.

(b) Staff turnover must be reported for the most recent 12-month period ending on the last workday of the most recent calendar quarter prior to the date the information is submitted. The turnover rate must be computed quarterly, with the annual rate being the cumulative sum of the quarterly rates. The turnover rate is the total number of terminations or separations experienced during the quarter, excluding any employee terminated during a probationary period of 3 months or less, divided by the total number of staff employed at the end of the period for which the rate is computed, and expressed as a percentage.

(c) The formula for determining staff stability is the total number of employees that have been employed for more than 12 months, divided by the total number of employees employed at the end of the most recent calendar quarter, and expressed as a percentage.

(d) A nursing facility that has failed to comply with state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for a period of 6 consecutive days. For the purposes of this paragraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure to impose such an admissions moratorium constitutes a class II deficiency.

(e) A nursing facility which does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(a) only if it has failed to meet those standards on 2 consecutive days or if it has failed to meet at least 97 percent of those standards on any one day.

(f) A facility which has a conditional license must be in compliance with the standards in s. 400.23(3)(a) at all times.

Nothing in this section shall limit the agency's ability to impose a deficiency or take other actions if a facility does not have enough staff to meet the residents' needs.

Facilities that have been awarded a Gold Seal under the program established in s. 400.235 may develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules and may apply to the agency for approval of their program.

Section 24. Paragraph (b) of subsection (5) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(b) Evidence financial soundness and stability according to standards adopted by the agency in administrative rule. Such standards must include, but not be limited to, criteria for the use of financial statements that are prepared in accordance with generally accepted accounting principles and that are reviewed or audited by certified public accountants.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

Section 25. Subsections (1), (2), (7), (8), and (9) of section 400.452, Florida Statutes, are amended to read:

400.452 Staff training and educational programs; core educational requirement.—

(1) The department shall ensure that provide, or cause to be provided, training and educational programs for the administrators and other assisted living facility staff have met training and education requirements that to better enable them to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.

(2) The department shall ~~also~~ establish a core educational requirement ~~to be used in these programs~~. Successful completion of the core educational requirement must include successful completion of a competency test. ~~Programs must be provided by the department or by a provider approved by the department at least quarterly.~~ The core educational requirement must cover at least the following topics:

- (a) State law and rules relating to assisted living facilities.
- (b) Resident rights and identifying and reporting abuse, neglect, and exploitation.
- (c) Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs.
- (d) Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.
- (e) Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication.
- (f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures.
- (g) Care of persons with Alzheimer's disease and related disorders.

~~(7) A facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee for such training and education programs. A facility that has one or more such residents shall pay a reduced fee that is proportional to the percentage of such residents in the facility. Any facility more than 90 percent of whose residents receive monthly optional state supplementation payments is not required to pay for the training and continuing education programs required under this section.~~

~~(7)(8)~~ If the department or the agency determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, the department or the agency may require, and provide, or cause to be provided, the training or education of any personal care staff in the facility.

~~(8)(9)~~ The department shall adopt rules to establish training programs, standards and curriculum for training, staff training requirements, procedures for approving training programs, and training fees.

Section 26. Subsections (7), (8), and (9) are added to section 430.502, Florida Statutes, to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(7) The Agency for Health Care Administration and the department shall seek a federal waiver to implement a Medicaid home and community-based waiver targeted to persons with Alzheimer's disease to test the effectiveness of Alzheimer's specific interventions to delay or to avoid institutional placement.

(8) The department will implement the waiver program specified in subsection (7). The agency and the department shall ensure that providers are selected that have a history of successfully serving persons with Alzheimer's disease. The department and the agency shall develop specialized standards for providers and services tailored to persons in the early, middle, and late stages of Alzheimer's disease and designate a level of care determination process and standard that is most appropriate to this population. The department and the agency shall include in the waiver services designed to assist the caregiver in continuing to provide in-home care. The department shall implement this waiver program subject to a specific appropriation or as provided in the General Appropriations Act. The department and the agency shall submit their program design to the President of the Senate and the Speaker of the House of Representatives for consultation during the development process.

(9) Authority to continue the waiver program specified in subsection (7) shall be automatically eliminated at the close of the 2008 Regular Session of the Legislature unless further legislative action is taken to continue it prior to such time.

Section 27. Subsection (1) of section 400.557, Florida Statutes, is amended to read:

400.557 Expiration of license; renewal; conditional license or permit.—

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

Section 28. Subsection (3) of section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal.—

(3) The agency shall notify a licensee at least 120 days before the expiration date that license renewal is required to continue operation. The notification must be provided electronically or by mail delivery. Application for a license or annual license renewal must be made on a form provided by the agency, signed under oath, and must be accompanied by a licensing fee of \$100 per year.

Section 29. Subsection (4) of section 400.980, Florida Statutes, is reenacted and amended to read:

400.980 Health care services pools.—

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

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with patients. The agency shall require background screening of the managing employee or other similarly titled individual who is responsible for the operation of the entity, and of the financial officer or other similarly titled individual who is responsible for the financial operation of the entity, including billings for services in accordance with the level 2 standards for background screening as set forth in chapter 435.

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

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

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

fication exemption has not been requested of and granted by the agency as set forth in chapter 435.

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

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

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

~~(h) The provisions of this section which require an applicant for registration to undergo background screening shall stand repealed on June 30, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(h)(i) Failure to provide all required documentation within 30 days after a written request from the agency will result in denial of the application for registration.

(i)(j) The agency must take final action on an application for registration within 60 days after receipt of all required documentation.

(j)(k) The agency may deny, revoke, or suspend the registration of any applicant or registrant who:

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

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

3. Fails to comply with this section or applicable rules.

4. Commits an intentional, reckless, or negligent act that materially affects the health or safety of a person receiving services.

Section 30. Section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(1) The agency may require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties. Specifications for data to be collected under this section shall be developed by the agency with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.

(a) Data to be submitted by health care facilities may include, but are not limited to: case-mix data, patient admission or discharge data with patient and provider-specific identifiers included, actual charge data by diagnostic groups, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and demographic data. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient bills, medical record abstracts, and related diagnostic information.

(b) Data to be submitted by health care providers may include, but are not limited to: Medicare and Medicaid participation, types of services offered to patients, amount of revenue and expenses of the health care provider, and such other data which are reasonably necessary to study utilization patterns.

(c) Data to be submitted by health insurers may include, but are not limited to: claims, premium, administration, and financial information.

(d) Data required to be submitted by health care facilities, health care providers, or health insurers shall not include specific provider contract reimbursement information. However, such specific provider reimbursement data shall be reasonably available for onsite inspection by the agency as is necessary to carry out the agency's regulatory duties. Any such data obtained by the agency as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) A requirement to submit data shall be adopted by rule if the submission of data is being required of all members of any type of health care facility, health care provider, or health insurer. Rules are not required, however, for the submission of data for a special study mandated by the Legislature or when information is being requested for a single health care facility, health care provider, or health insurer.

(2) The agency shall, by rule, after consulting with appropriate professional and governmental advisory bodies and holding public hearings and considering existing and proposed systems of accounting and reporting utilized by health care facilities, specify a uniform system of financial reporting for each type of facility based on a uniform chart of accounts developed after considering any chart of accounts developed by the national association for such facilities and generally accepted accounting principles. Such systems shall, to the extent feasible, use existing accounting systems and shall minimize the paperwork required of facilities. This provision shall not be construed to authorize the agency to require health care facilities to adopt a uniform accounting system. As a part of such uniform system of financial reporting, the agency may require the filing of any information relating to the cost to the provider and the charge to the consumer of any service provided in such facility, except the cost of a physician's services which is billed independently of the facility.

(3) When more than one licensed facility is operated by the reporting organization, the information required by this section shall be reported for each facility separately.

(4)(a) Within 120 days after the end of its fiscal year, each health care facility, excluding continuing care facilities and nursing homes as defined in s. 408.07(14) and (36), shall file with the agency, on forms adopted by the agency and based on the uniform system of financial reporting, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports which are certified to be complete and accurate by the provider. However, hospitals' actual financial experience shall be their audited actual experience. Nursing homes that do not participate in the Medicare or Medicaid programs shall also submit audited actual experience. Every nursing home shall submit to the agency, in a format designated by the agency, a statistical profile of the nursing home residents. The agency, in conjunction with the Department of Elderly Affairs and the Department of Health, shall review these statistical profiles and develop recommendations for the types of residents who might more appropriately be placed in their homes or other noninstitutional settings.

~~(b) Each nursing home shall also submit a schedule of the charges in effect at the beginning of the fiscal year and any changes that were made during the fiscal year. A nursing home which is certified under Title XIX of the Social Security Act and files annual Medicaid cost reports may substitute copies of such reports and any Medicaid audits to the agency in lieu of a report and audit required under this subsection. For such facilities, the agency may require only information in compliance with this chapter that is not contained in the Medicaid cost report. Facilities that are certified under Title XVIII, but not Title XIX, of the Social Security Act must submit a report as developed by the agency. This report shall be substantially the same as the Medicaid cost report and shall not require any more information than is contained in the Medicare cost report unless that information is required of all nursing homes. The audit under Title XVIII shall satisfy the audit requirement under this subsection.~~

(5) In addition to information submitted in accordance with subsection (4), each nursing home shall track and file with the agency, on a form adopted by the agency, data related to each resident's admission, discharge, or conversion to Medicaid; health and functional status; plan of care; and other information pertinent to the resident's placement in a nursing home.

~~(6) Any nursing home which assesses residents a separate charge for personal laundry services shall submit to the agency data on the monthly charge for such services, excluding drycleaning. For facilities that charge based on the amount of laundry, the most recent schedule of charges and the average monthly charge shall be submitted to the agency.~~

(6)(7) The agency may require other reports based on the uniform system of financial reporting necessary to accomplish the purposes of this chapter.

(7)(8) Portions of patient records obtained or generated by the agency containing the name, residence or business address, telephone number, social security or other identifying number, or photograph of any person or the spouse, relative, or guardian of such person, or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(8)(9) The identity of any health care provider, health care facility, or health insurer who submits any data which is proprietary business information to the agency pursuant to the provisions of this section shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this section, "proprietary business information" shall include, but not be limited to, information relating to specific provider contract reimbursement information; information relating to security measures, systems, or procedures; and information concerning bids or other contractual data, the disclosure of which would impair efforts to contract for goods or services on favorable terms or would injure the affected entity's ability to compete in the marketplace. Notwithstanding the provisions of this subsection, any information obtained or generated pursuant to the provisions of former s. 407.61, either by the former Health Care Cost Containment Board or by the Agency for Health Care Administration upon transfer to that agency of the duties and functions of the former Health Care Cost Containment Board, is not confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such proprietary business information may be used in published analyses and reports or otherwise made available for public disclosure in such manner as to preserve the confidentiality of the identity of the provider. This exemption shall not limit the use of any information used in conjunction with investigation or enforcement purposes under the provisions of s. 456.073.

(9)(10) No health care facility, health care provider, health insurer, or other reporting entity or its employees or agents shall be held liable for civil damages or subject to criminal penalties either for the reporting of patient data to the agency or for the release of such data by the agency as authorized by this chapter.

(10)~~(11)~~ The agency shall be the primary source for collection and dissemination of health care data. No other agency of state government may gather data from a health care provider licensed or regulated under this chapter without first determining if the data is currently being collected by the agency and affirmatively demonstrating that it would be more cost-effective for an agency of state government other than the agency to gather the health care data. The director shall ensure that health care data collected by the divisions within the agency is coordinated. It is the express intent of the Legislature that all health care data be collected by a single source within the agency and that other divisions within the agency, and all other agencies of state government, obtain data for analysis, regulation, and public dissemination purposes from that single source. Confidential information may be released to other governmental entities or to parties contracting with the agency to perform agency duties or functions as needed in connection with the performance of the duties of the receiving entity. The receiving entity or party shall retain the confidentiality of such information as provided for herein.

(11)~~(12)~~ The agency shall cooperate with local health councils and the state health planning agency with regard to health care data collection and dissemination and shall cooperate with state agencies in any efforts to establish an integrated health care database.

(12)~~(13)~~ It is the policy of this state that philanthropic support for health care should be encouraged and expanded, especially in support of experimental and innovative efforts to improve the health care delivery system.

(13)~~(14)~~ For purposes of determining reasonable costs of services furnished by health care facilities, unrestricted grants, gifts, and income from endowments shall not be deducted from any operating costs of such health care facilities, and, in addition, the following items shall not be deducted from any operating costs of such health care facilities:

(a) An unrestricted grant or gift, or income from such a grant or gift, which is not available for use as operating funds because of its designation by the health care facility's governing board.

(b) A grant or similar payment which is made by a governmental entity and which is not available, under the terms of the grant or payment, for use as operating funds.

(c) The sale or mortgage of any real estate or other capital assets of the health care facility which the health care facility acquired through a gift or grant and which is not available for use as operating funds under the terms of the gift or grant or because of its designation by the health care facility's governing board, except for recovery of the appropriate share of gains and losses realized from the disposal of depreciable assets.

Section 31. Section 408.062, Florida Statutes, is amended to read:

408.062 Research, analyses, studies, and reports.—

(1) The agency shall have the authority to conduct research, analyses, and studies relating to health care costs and access to and quality of health

care services as access and quality are affected by changes in health care costs. Such research, analyses, and studies shall include, but not be limited to, research and analysis relating to:

(a) The financial status of any health care facility or facilities subject to the provisions of this chapter.

(b) The impact of uncompensated charity care on health care facilities and health care providers.

(c) The state's role in assisting to fund indigent care.

(d) The availability and affordability of health insurance for small businesses.

(e) Total health care expenditures in the state according to the sources of payment and the type of expenditure.

(f) The quality of health services, using techniques such as small area analysis, severity adjustments, and risk-adjusted mortality rates.

(g) The development of physician payment systems which are capable of taking into account the amount of resources consumed and the outcomes produced in the delivery of care.

(h) The impact of subacute admissions on hospital revenues and expenses for purposes of calculating adjusted admissions as defined in s. 408.07.

~~(2) The agency shall evaluate data from nursing home financial reports and shall document and monitor:~~

~~(a) Total revenues, annual change in revenues, and revenues by source and classification, including contributions for a resident's care from the resident's resources and from the family and contributions not directed toward any specific resident's care.~~

~~(b) Average resident charges by geographic region, payor, and type of facility ownership.~~

~~(c) Profit margins by geographic region and type of facility ownership.~~

~~(d) Amount of charity care provided by geographic region and type of facility ownership.~~

~~(e) Resident days by payor category.~~

~~(f) Experience related to Medicaid conversion as reported under s. 408.061.~~

~~(g) Other information pertaining to nursing home revenues and expenditures.~~

~~The findings of the agency shall be included in an annual report to the Governor and Legislature by January 1 each year.~~

(2)(3) The agency may assess annually the caesarean section rate in Florida hospitals using the analysis methodology that the agency determines most appropriate. To assist the agency in determining the impact of this chapter on Florida hospitals' caesarean section rates, each provider hospital, as defined in s. 383.336, shall notify the agency of the date of implementation of the practice parameters and the date of the first meeting of the hospital peer review board created pursuant to this chapter. The agency shall use these dates in monitoring any change in provider hospital caesarean section rates. An annual report based on this monitoring and assessment shall be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate by the agency, with the first annual report due January 1, 1993.

(3)(4) The agency may also prepare such summaries and compilations or other supplementary reports based on the information analyzed by the agency under this section, as will advance the purposes of this chapter.

(4)(5)(a) The agency may conduct data-based studies and evaluations and make recommendations to the Legislature and the Governor concerning exemptions, the effectiveness of limitations of referrals, restrictions on investment interests and compensation arrangements, and the effectiveness of public disclosure. Such analysis may include, but need not be limited to, utilization of services, cost of care, quality of care, and access to care. The agency may require the submission of data necessary to carry out this duty, which may include, but need not be limited to, data concerning ownership, Medicare and Medicaid, charity care, types of services offered to patients, revenues and expenses, patient-encounter data, and other data reasonably necessary to study utilization patterns and the impact of health care provider ownership interests in health-care-related entities on the cost, quality, and accessibility of health care.

(b) The agency may collect such data from any health facility as a special study.

Section 32. Subsection (2) of section 408.831, Florida Statutes, is renumbered as subsection (3) and a new subsection (2) is added to said section to read:

408.831 Denial, suspension, or revocation of a license, registration, certificate, or application.—

(2) In reviewing any application requesting a change of ownership or change of the licensee, registrant, or certificate holder, the transferor shall, prior to agency approval of the change, repay or make arrangements to repay any amounts owed to the agency. Should the transferor fail to repay or make arrangements to repay the amounts owed to the agency, the issuance of a license, registration, or certificate to the transferee shall be delayed until repayment or until arrangements for repayment are made.

Section 33. Subsection (1) of section 409.9116, Florida Statutes, is amended to read:

409.9116 Disproportionate share/financial assistance program for rural hospitals.—In addition to the payments made under s. 409.911, the Agency for Health Care Administration shall administer a federally matched disproportionate share program and a state-funded financial assistance program for statutory rural hospitals. The agency shall make disproportionate share payments to statutory rural hospitals that qualify for such payments and financial assistance payments to statutory rural hospitals that do not qualify for disproportionate share payments. The disproportionate share program payments shall be limited by and conform with federal requirements. Funds shall be distributed quarterly in each fiscal year for which an appropriation is made. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate in the rural hospital disproportionate share program or the financial assistance program:

$$\text{TAERH} = (\text{CCD} + \text{MDD})/\text{TPD}$$

Where:

CCD = total charity care-other, plus charity care-Hill-Burton, minus 50 percent of unrestricted tax revenue from local governments, and restricted funds for indigent care, divided by gross revenue per adjusted patient day; however, if CCD is less than zero, then zero shall be used for CCD.

MDD = Medicaid inpatient days plus Medicaid HMO inpatient days.

TPD = total inpatient days.

TAERH = total amount earned by each rural hospital.

In computing the total amount earned by each rural hospital, the agency must use the most recent actual data reported in accordance with s. 408.061(4)(a).

Section 34. This act shall take effect upon becoming a law.

Approved by the Governor May 30, 2003.

Filed in Office Secretary of State May 30, 2003.